

*This opinion is nonprecedential except as provided by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
A25-0937**

City of Ellendale,
Respondent,

vs.

Daniel Petsinger,
Appellant,

Carrie Petsinger,
Appellant.

**Filed April 13, 2026
Affirmed
Segal, Judge***

Steele County District Court
File No. 74-CV-24-1791

Jason J. Kuboushek, Carlos Soto-Quezada, Iverson Reuvers, Bloomington, Minnesota (for respondent)

Daniel H. Petsinger, Ellendale, Minnesota (pro se appellant)

Carrie A. Petsinger, Ellendale, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Segal, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SEGAL, Judge

Appellants Daniel and Carrie Petsinger challenge the grant of summary judgment in favor of respondent City of Ellendale on the city’s complaint, which alleged that the Petsingers violated the city’s zoning and public-nuisance ordinances by placing an unpermitted structure on their residential-zoned property. The Petsingers also challenge the district court’s denial of their motion to dismiss for improper service, claim a violation of their due-process rights, and ask this court to enjoin several city officials from future participation in their case, among other assertions. Because we conclude that the Petsingers’ arguments either fail on the merits or were forfeited, we affirm.

FACTS

The following summarizes the undisputed facts. In March 2024, the Petsingers erected a tower with mounted cameras on their residential property. The city demanded that the Petsingers remove the tower because the Petsingers’ property is zoned R-1 (residential) and towers are not a permitted use in an R-1 zoning district.¹ *See* Ellendale, Minn., Code of Ordinances (ECO) §§ 152.090-.102 (2021 & 2023). The Petsingers complied with the city’s demand and removed the camera tower.

Shortly thereafter, the Petsingers erected another structure with cameras mounted on a pole. But this time, the Petsingers used a three-wheeled trailer as the base for the pole.

¹ The city zoning code contains an exception that allows a “radio or television broadcasting tower or station” in an R-1 district, with the grant of a conditional use permit. *See* Ellendale, Minn., Code of Ordinances (ECO) § 152.102(b)(2) (2021); *accord* ECO § 152.219 (2025).

The structure was set on a circular gravel pad. The trailer was held up by a cinder block and stabilizers, such that the wheels were suspended off the ground. The Petsingers submitted the following photograph of the structure into the record.



The city concluded that this structure, like the camera tower it had replaced, was also not a permitted use within the R-1 district and demanded that it be removed. The Petsingers asserted that the structure was a “trailer” and that the zoning code expressly allows trailers to be located on properties within the R-1 district. The Petsingers refused to remove the structure and never applied for a conditional-use permit. The city then initiated a suit in district court under its authority to enforce its zoning code and to abate public nuisances under its ordinances. *See* ECO §§ 10.99 (2024); 92.15, .23, .24 (2021); 152.317, .318(C) (2021). The suit sought abatement, injunctive relief, and recovery of the costs incurred by the city, including attorney fees. The Petsingers filed a counterclaim

alleging judicial harassment, violation of due process, private nuisance, and ten other counts.

The city moved for summary judgment and the Petsingers filed a cross-motion for summary judgment on their counterclaims. The Petsingers also filed a motion alleging that city council members and the city clerk should be joined as parties, and Carrie² filed a motion to dismiss alleging improper service. After a hearing, the district court granted the city's motion for summary judgment and denied the Petsingers' motions.

In granting the city's motion for summary judgment, the district court reasoned that it is not material what "the structure is called—be it RV, commercial trailer, tower, telecommunications tower, or a public benefit—it is the Petsingers' use of [the] structure that is at issue." The district court noted that "[n]either party is in dispute about what the Petsingers are using the structure for, i.e., for mounting cameras on" and that "[c]laiming the *ability* to move" the structure, does not mean that it is being used as a trailer. The district court concluded that it was being used instead for an unpermitted use—as a base for pole-mounted cameras. The district court thus determined that the city was entitled to judgment as a matter of law on its zoning-code violation and public-nuisance claims and (1) ordered that the city had the right to enter the Petsingers property and abate the violation, but allowed the Petsingers ten days to remove the structure themselves, (2) permanently enjoined the Petsingers from "locating or building a tower in an R-1

² For ease of reference, when referring to the Petsingers individually we use their first names.

[z]oning area in [the city],” and (3) granted the city recovery of its costs, including attorney fees.

DECISION

I.

We address first the Petsingers’ argument that the district court erred by granting summary judgment in favor of the city. The Petsingers contend that the district court erred in concluding (1) that the structure was a prohibited use and (2) that the city established that the structure is a public nuisance.³

Appellate courts “review a grant of summary judgment de novo.” *Fletcher Props., Inc. v. City of Minneapolis*, 24 N.W.3d 287, 299 (Minn. 2025). A district court “shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. In reviewing a district court’s summary-judgment decision, appellate courts “examine whether there are any genuine issues of material fact and whether the district court properly applied the law.” *Henry v. Indep. Sch. Dist. No. 625*, 988 N.W.2d 868, 880 (Minn. 2023). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008).

³ We observe that the Petsingers’ brief contains citations to various legal authorities that do not exist. While we assume this was unintentional, we nevertheless point it out and urge all parties to check citations for accuracy.

In support of their argument that the structure is a permitted use, the Petsingers maintain that the structure satisfies the definition of a “trailer” within the meaning of the state’s vehicle-registration statute and is therefore a permitted use.⁴ See Minn. Stat. § 168.002, subd. 35 (defining “trailer” as meaning “any vehicle designed for carrying property or passenger on its own structure and for being drawn by a motor vehicle”). The interpretation of ordinances involves a question of law that we review de novo. *In re Rental Dwelling Lic. held by Khan*, 804 N.W.2d 132, 142 (Minn. App. 2011). The Petsingers argue that the district court erred because it “effectively rewrot[e]” the city’s zoning ordinance “to treat a permitted trailer as a prohibited tower.” We are not persuaded.

As the district court concluded, while the base of the structure may well be a trailer, it was not being used by the Petsingers as a “trailer”—it was being used as the base for pole-mounted cameras. As such, the structure does not qualify as a “trailer” under the statutory definition advocated by the Petsingers. Indeed, the camera pole would have to be removed or fully retracted before the trailer could be “drawn by a motor vehicle” on public roads. Minn. Stat. § 168.002, subd. 35.

Zoning codes regulate not just what can be built on property—i.e., single-family homes vs. multistory apartment complexes—but which *uses* are allowed for such buildings and structures—residential vs. heavy industrial or a trailer vs. a camera tower. See, e.g., *City of Waconia v. Dock*, 961 N.W.2d 220, 229-31 (Minn. 2021) (citing Minn. Stat.

⁴ For the purposes of this opinion, we assume without deciding that the definition of “trailer” in Minn. Stat. § 168.002, subd. 35 (2024), is applicable to the zoning-code provision at issue here.

§ 462.357, subd. 1 (2020)) (describing the subjects of zoning ordinances and codes to include “the location, type of foundation, and uses of structures”). The structure here was not being used as a trailer to transport property from one place to another, but as a camera tower. Because camera towers are an unpermitted use, we discern no error in the district court’s conclusion that the Petsingers were in violation of the city’s zoning code.⁵

Turning to their second argument, the Petsingers contend that the district court erred in granting summary judgment to the city on its public-nuisance claim because the city failed to produce evidence that the structure violates the state’s public-nuisance law. *See* Minn. Stat. §§ 617.80-.87 (2024). Specifically, the Petsingers argue that the state public-nuisance law “requires proof that a condition ‘unreasonably endangers the health, safety, or welfare of the public.’” We presume that the Petsingers are referring to Minnesota Statutes section 617.81, subdivision 2(a)(2)(iii), which in turn references a provision of the state criminal laws. *See* Minn. Stat. § 617.81, subd. 2(a)(2)(iii) (referencing violations of Minn. Stat. § 609.74 (2024)).

We reject the Petsingers’ argument. The city’s public-nuisance claim was brought under the *city’s* public-nuisance ordinance, not the *state* public-nuisance statute. *Compare*

⁵ The Petsingers also argue that the district court ignored the existence of genuine issues of material fact in granting summary judgment, but they fail to identify any such fact issues. As we note above, their argument about whether the structure constitutes a “trailer” or an unpermitted “tower,” involves interpretation of the city’s zoning ordinance—a question of law—not a dispute concerning material facts. *Khan*, 804 N.W.2d at 142. “When a motion for summary judgment is made and supported, the . . . party [opposing the motion] must present specific facts showing that there is a genuine issue for trial.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). The Petsingers have failed to satisfy that burden in this case.

ECO § 92.15 *with* Minn. Stat. § 617.81. The state law and the city ordinance are not identical, and the Petsingers make no argument concerning the city’s public-nuisance ordinance. We generally do not consider arguments that are not briefed on appeal, and we decline to do so here. *See State, Dep’t of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *see also Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (stating that “an assignment of error” in a brief “based on mere assertion and not supported by argument or [authority]” is waived “unless prejudicial error is obvious on mere inspection”). Moreover, it appears that the remedies available (and ordered by the district court in this case)—abatement, injunction, and an award of costs—are identical under the city’s zoning code and public-nuisance ordinance. *See* ECO §§ 10.99; 92.23, .24; 152.317, .318(c). Thus, it does not appear that the relief ordered by the district court is any broader than the relief that would have been imposed based solely on the violation of the city’s zoning code.

II.

The Petsingers next argue that the district court erred in denying their motion to dismiss because of an alleged defect in service. The Petsingers’ argument is premised on an interpretation of court rules that we review *de novo*. *Glen Edin of Edinburgh Ass’n v. Hiscox Ins. Co.*, 992 N.W.2d 393, 397 (Minn. 2023).

The Petsingers contend that service of the motion for summary judgment was defective because they were not individually served with copies of the city’s summary-judgment motion and accompanying pleadings and that the district court thus erred in

granting summary judgment.⁶ They assert, and the city does not dispute, that a single copy of the motion papers was served by mail in an envelope addressed to both Daniel and Carrie Petsinger. They contend that service was therefore improper under Minn. Gen. R. Prac. 115.03(a), which requires service of summary-judgment motion papers “on all opposing counsel and self-represented litigants” at least 28 days prior to the hearing date on the motion. But as the district court noted in its order denying the Petsingers’ motion, Daniel and Carrie are married and live in the same home. They both also received the motion papers at least 28 days before the motion hearing and filed papers in response to the motion.

Court rules governing the service of motion papers, after a suit has been commenced, are subject to harmless-error analysis. *See* Minn. R. Civ. P. 61 (providing that the courts are to “disregard any error or defect in the proceeding which does not affect the substantial rights of the parties”); *In re Application of Skyline Materials, Ltd. for Zoning Variance*, 835 N.W.2d 472, 475-76 (Minn. 2013) (explaining the difference between service of process of a summons and complaint under Minn. R. Civ. P. 4 and service of pleadings subsequent to service of the original complaint under Minn. R. Civ. P. 5). The Petsingers fail to cite to any prejudice they suffered by reason of being served only a single copy of the motion papers, let alone one that negatively affected their “substantial rights.”

⁶ The Petsingers argue that neither Daniel nor Carrie was properly served, but the Petsingers argued improper service only as to Carrie before the district court. Thus, their argument as to Daniel is not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (setting out principle that appellate courts generally will not consider matters not argued to and considered by the district court). Nevertheless, because the argument and analysis is the same, we treat the challenge as a joint challenge for ease of reference.

Minn. R. Civ. P. 61. Thus, even if we were to assume without deciding, that the rules require that the city’s summary-judgment motion papers be served in two separate envelopes, we would conclude that the error was harmless. We thus discern no error in the district court’s denial of their motion to dismiss.⁷

III.

The Petsingers assert various other theories for reversal, including an alleged violation of their due-process rights, misconduct of a public officer by reason of the city’s alleged improper service, a request for this court to enjoin the participation of certain city officials from further participation in this matter, and that the injunction is preempted by a Federal Communications Commission ruling not involving the Petsingers. These arguments do not entitle the Petsingers to a reversal of the judgment because the arguments are either repetitive of the same arguments we have rejected earlier in this opinion or are deemed forfeited because they were not asserted before the district court.

⁷ The Petsingers also argue that service of process was improper because they were personally served with the summons and complaint in this action on October 10, 2024, but that the city only filed its complaint with the court on October 31, 2024, after the Petsingers had filed their answer. The Petsingers, however, failed to assert this in their motion before the district court; the district court thus did not consider this argument and we decline to do so here. *See Thiele*, 425 N.W.2d at 582. But even if the issue was properly before us, we would reject it. Under the Minnesota Rules of Civil Procedure, a civil lawsuit is commenced by service of process. *See* Minn. R. Civ. P. 3.01. A plaintiff is not required to file a summons and complaint with the district court until a year after the commencement of the action. *See* Minn. R. Civ. P. 5.04(a) (providing that “[a]ny action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties” except under certain conditions not relevant here). The Petsingers thus fail to identify an error on this basis.

For example, the Petsingers fail to delineate the basis for their due-process argument and, to the extent we can discern a basis from their briefing, it appears to be a repeat of their improper-service claim that we have rejected; the due-process argument was also never asserted before the district court and is therefore forfeited. *See Thiele*, 425 N.W.2d at 582; *see also In re Est. of Nelson*, 901 N.W.2d 234, 242 (Minn. App. 2017) (applying the forfeiture rule to allegations of a constitutional violation), *rev. denied* (Minn. Nov. 28, 2017). Similarly, their misconduct-of-a-public-officer, federal preemption arguments, and request for an injunction preventing the participation of certain city officials in this case were not asserted before the district court, and those arguments are forfeited. *See Thiele*, 425 N.W.2d at 582.

Affirmed.