

*This opinion is nonprecedential except as provided by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
A25-1309**

Mai Lia Xiong,
Respondent,

vs.

Derick James Davis,
Appellant.

**Filed April 20, 2026
Affirmed
Johnson, Judge**

Washinton County District Court
File No. 82-CV-25-1804

Mai Lia Xiong, Woodbury, Minnesota (*pro se* respondent)

Charles S. Clas, Jr., Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The district court issued a harassment restraining order (HRO) that prohibits Derick James Davis from harassing or contacting Mai Lia Xiong for two years. Davis argues that the district court erred on the ground that the conduct underlying the finding of harassment was motivated by a proper purpose and was not objectively unreasonable. We reject Davis's arguments and, therefore, affirm.

FACTS

This appeal arises from the second of two cases in which Xiong petitioned for an HRO against Davis. In the first case, the district court issued an *ex parte* HRO and scheduled a hearing for March 31, 2025. Five days before the scheduled hearing, an attorney representing Davis sent a letter to Xiong requesting that she voluntarily dismiss her harassment petition. Davis's attorney stated that Xiong was lacking evidence and had made frivolous claims. Davis's attorney also stated, "If the case proceeds to trial without merit, I will request that the court impose monetary sanctions." Davis's attorney further stated, "If you dismiss the matter Mr. Davis will agree to no longer have any contact with you." Davis's attorney included with his letter a document that Xiong could sign and file to dismiss the case.

At the courthouse on the morning of the scheduled hearing, Davis's attorney approached Xiong and reiterated the settlement offer. Xiong agreed to dismiss the case. She signed and filed the request for dismissal that Davis's attorney had prepared and provided to her.

Later that same day, at 12:26 p.m., Davis sent an e-mail message to Xiong. The message stated: "Please see the attached legal demand. This communication is not personal in nature. It is a legal demand sent in accordance with my rights under Minnesota law." Attached to the e-mail message was a two-page letter in which Davis accused Xiong of making false statements in the harassment petition that had been dismissed. Davis asserted that Xiong had committed a felony-level perjury offense. Davis also stated, "This demand constitutes your only opportunity to resolve this matter without additional legal

action.” Davis demanded payment of \$3,500 for his “legal expenses, lost time, and reputational harm.” Davis further stated that if Xiong did not make such a payment to him, he would commence a civil action against her and would “file a formal felony perjury complaint” with the county attorney’s office.

In addition to sending the e-mail message, Davis sent the two-page letter to Xiong by U.S. Mail. Xiong received both the e-mail message and the mailed letter.

One day after Davis’s e-mail message, Xiong filed a second petition for an HRO against Davis. Xiong alleged that, on the previous day, she and Davis entered into an agreement in the first harassment case, that Davis “was officially told in court to have no further contact directly or indirectly,” and that Davis “agreed in court there will be no future contact.”

The district court conducted a short hearing in May 2025. Both Xiong and Davis were self-represented. They were the only witnesses. The district court received five exhibits. Xiong reiterated the allegations in her HRO petition by describing the prior harassment case and the settlement agreement that resolved it. Davis acknowledged the settlement agreement but testified that, in his view, his e-mail message and letter were legal communications and, thus, not harassment.

In June 2025, the district court granted Xiong’s petition. The district court made the following finding:

[Davis] violated the agreement to have no contact with [Xiong], which resulted in the dismissal of [Xiong’s first harassment case], by sending mail and e-mail to [Xiong] directly, though he could have contacted [Xiong] through the attorney he used in the prior file. [Davis]’s direct contact by

handwritten U.S. Mail and by e-mail was intended to have a substantial adverse effect on [Xiong]’s security.

The district court issued an HRO that, for a period of two years, prohibits Davis from harassing Xiong and from having any “direct or indirect contact with” her.

Davis appeals and asserts multiple arguments for reversal. Xiong has not filed a responsive brief. Nonetheless, even in the absence of a responsive brief, the appeal “shall be determined on the merits.” Minn. R. Civ. App. P. 142.03.

DECISION

Davis argues that the district court erred by granting Xiong’s petition and issuing an HRO.

A district court may issue an HRO to require a person “to cease or avoid the harassment of another person” or “to have no contact with another person” if the court finds “that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(a), (b)(3) (2024). “Harassment,” for purposes of an HRO, is defined by statute to include “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) (2024). If a district court finds that a person has engaged in harassment, the district court “may issue” an HRO. *Id.*, subd. 5(b).

This court applies a clear-error standard of review to a district court’s findings of fact concerning a petitioner’s allegations of harassment, *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004); a *de novo* standard of

review to a district court’s conclusions of law, *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008); and an abuse-of-discretion standard of review to a district court’s decision to issue an HRO based on a finding that a person has engaged in harassment, *Wilson v. Wilson*, 11 N.W.3d 331, 338-39 (Minn. App. 2024), *rev. denied* (Minn. Dec. 17, 2024).

A.

Davis first argues that his conduct is not harassment on the ground that his written communications were “legally protected” communications, “legal correspondence” related to “a legitimate dispute,” “legal correspondence sent to collect a legitimate debt,” a “demand letter,” and “service of legal process.”

We begin by questioning Davis’s characterizations of his written communications. The conduct on which the finding of harassment is based is not the service and filing of pleadings or other documents in a pending civil case. When Davis sent his written communications to Xiong, no civil case was pending. Just a few hours earlier, Xiong had voluntarily dismissed her first harassment case based on Davis’s written promise that, if she did so, he would “no longer have any contact with” her.¹ Furthermore, Davis’s written communications do not constitute service of process because he did not serve a summons and complaint on Xiong, an act that must be performed by a person who is “not a party” to the case. *See* Minn. R. Civ. P. 4.02. Moreover, Davis’s written communications did not

¹Davis contends that the agreement between him and Xiong did not, by its terms, clearly prohibit legal correspondence. But the HRO is not based directly on a contractual promise; rather, the HRO is based on a finding that Davis engaged in conduct prohibited by the harassment statute. *See* Minn. Stat. § 609.748, subd. 1(a)(1).

concern “a legitimate debt” because he had not previously established that Xiong was obligated to pay him the money he demanded.

Davis contends, in essence, that his written communications are exempt from the definition of harassment in section 609.748 because he was asserting his legal rights and proposing a resolution of those rights. But Davis does not cite any legal authority in support of that proposition. The statutory definition of harassment does not make any exceptions for acts, words, or gestures that communicate a person’s legal rights and demands. *See* Minn. Stat. § 609.748, subd. 1(a)(1)-(3). In the absence of any exceptions in the statute or in caselaw, Davis’s written communications to Xiong must be analyzed according to generally applicable principles.

Thus, Davis’s written communications are not exempt from the statutory definition of harassment on the ground that they are legal in nature.

B.

Davis also argues that his written communications are not harassment on the ground that his conduct was not objectively unreasonable.

A finding of harassment requires “objectively unreasonable conduct or intent on the part of the harasser.” *Peterson*, 755 N.W.2d at 764 (quotations omitted). The district court found that Davis’s written communications were “intended to have a substantial adverse effect on [Xiong]’s security.” Davis does not challenge that finding on appeal. The question remains whether Davis’s written communications were objectively unreasonable.

The supreme court has acknowledged that “relationship history may provide context for a district court when deciding whether the harasser’s conduct was objectively

unreasonable.” *Wilson*, 11 N.W.3d at 338 (quotation omitted). In this case, the fact that Xiong and Davis were opposing parties to Xiong’s first harassment case provides relevant context. In the prior case, Davis’s attorney informed Xiong by letter that Davis would seek monetary sanctions against her if she pursued her first harassment petition to a hearing, which implies that Davis would *not* seek such sanctions against Xiong if she dismissed the first harassment case. In addition, Davis’s attorney’s letter expressly stated that, if Xiong dismissed her harassment petition, Davis would “agree to no longer have any contact with” her. Davis’s attorney reiterated the settlement offer at the courthouse shortly before the hearing.

It is apparent that Xiong was induced to dismiss her first harassment case by Davis’s promises that he would not seek monetary sanctions against her and would “no longer have any contact with” her. However, only a few hours later, Davis contacted Xiong directly. He threatened to commence a lawsuit against her if she did not pay him \$3,500. He also threatened to refer Xiong to the county attorney’s office for criminal prosecution, a statement that may itself be a criminal offense. *See* Minn. Stat. § 609.27, subd. 1(5) (2024) (providing that person “is guilty of coercion” if the person threatens “to make or cause to be made a criminal charge, whether true or false,” which “causes another against the other’s will to do any act or forbear doing a lawful act”). Davis intentionally engaged in conduct that he had promised not to engage in if Xiong dismissed the first harassment case. In doing so, he nullified the benefits of the bargain for which Xiong had voluntarily dismissed her first harassment case. The district court found that Davis sent the e-mail and the letter

with the intent to cause a substantial adverse effect on Xiong. Xiong alleged in her second harassment petition that Davis's conduct had an adverse affect on her mental health.

Thus, in light of the circumstances and the context of the parties' prior litigation relationship, Davis's written communications are objectively unreasonable.²

C.

Davis last argues that the district court's finding of harassment and issuance of the HRO violates his constitutional rights. Specifically, he argues that his written communications are protected by his constitutional right to free speech, that the HRO violates his constitutional right of access to the courts, and that the finding of harassment violates his constitutional right to due process on the ground that the settlement agreement was unfair and ambiguous.

Davis did not make any constitutional arguments in the district court. Davis could have presented constitutional arguments to the district court after the issuance of the HRO by, for example, moving to vacate the HRO. *See Rew v. Bergstrom*, 845 N.W.2d 764, 774 (Minn. 2014) (describing motion to vacate order for protection on constitutional grounds). But Davis did not do so. Consequently, he is making constitutional arguments for the first time on appeal.

"It is an elementary principle of appellate procedure that a party may not raise an issue or argument for the first time on appeal and thereby seek appellate relief on an issue

²We note that Davis does not argue in his brief that his written communications are not harassment on the ground that they are not "repeated incidents of intrusive or unwanted acts, words, or gestures." *See* Minn. Stat. § 609.748, subd. 1(a)(1).

that was not litigated in the district court.” *Doe 175 ex. rel. Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 42 (Minn. App. 2014) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). “[I]f an appellant fails to preserve an argument or issue in district court proceedings, the issue or argument is forfeited and may not be asserted in an appellate court.” *Id.* at 43. Because Davis did not preserve constitutional arguments by making them in the district court, he may not raise them for the first time on appeal.

Even if we were to consider Davis’s constitutional arguments, we would conclude that they are without merit. First, Davis’s free-speech argument is inconsistent with this court’s opinion in *Dunham v. Roer*, 708 N.W.2d 552 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006), in which we rejected an overbreadth challenge to the harassment statute, reasoning that it is narrowly tailored and “only regulates speech or conduct that” is unprotected. *Id.* at 564-66; *cf. Rew*, 845 N.W.2d at 776-80 (holding that statute authorizing 50-year order for protection does not facially violate constitutional right to free speech). Second, the HRO does not prohibit Davis from contacting a court or from retaining an attorney to represent him in a legal dispute. Third, Davis mistakenly asserts that the HRO is based directly on the settlement agreement that resolved the first harassment case; the HRO necessarily is based on a finding that Davis engaged in conduct prohibited by the harassment statute. *See* Minn. Stat. § 609.748, subd. 1(a)(1).

Thus, Davis’s constitutional arguments are both forfeited and without merit.

In sum, the district court did not err by granting Xiong’s petition and issuing the HRO.

Affirmed.