

*This opinion is nonprecedential except as provided by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
A25-1605**

City of Blaine Police Department,
Respondent,

vs.

John Mark Luedtke,
Appellant.

**Filed May 26, 2026
Affirmed
Smith, John, Judge ***

Anoka County District Court
File No. 02-CV-24-1265

Joseph Van Thomme, Blaine City Attorney, Eckberg Lammers, Stillwater, Minnesota (for respondent)

John Mark Luedtke, River Falls, Wisconsin (pro se appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota, Megan M. Walsh, Christian Purnell, Special Assistant Attorneys General, Minneapolis, Minnesota (for intervenor Attorney General of Minnesota)

Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court’s grant of a one-year extension of an extreme risk protection order (ERPO) filed against the appellant because (1) his constitutional challenges were not properly preserved for appeal, (2) he may not collaterally attack the original ERPO on appeal, (3) the district court had the authority to extend the ERPO in the manner and time that it did, and (4) the respondent was authorized to apply for an extension of the ERPO.

FACTS

Extreme Risk Protection Orders

At a hearing on a petition for an ERPO, the petitioner “must prove by clear and convincing evidence that the respondent poses a significant danger to other persons or is at significant risk of suicide by possessing a firearm.” Minn. Stat. § 624.7172, subd. 2(a) (2024); *see generally* Minn. Stat. § 624.7171-.74 (2024) (articulating the governing ERPO law). When addressing “whether to grant [an ERPO] after a hearing, the court shall consider evidence [on factors listed in the statute].” Minn. Stat. § 624.7172, subd. 2(b). The district court “may” also consider certain other evidence. *Id.*, subd. 2(c). “If the court finds there is clear and convincing evidence to issue an [ERPO], the court shall issue the order prohibiting the person from possessing or purchasing a firearm for the duration of the order.” *Id.*, subd. 2(d); *see also* Minn. Stat. § 624.7171, subd. 4(a) (articulating that individuals subject to an ERPO are “enjoin[ed] and prohibit[ed] . . . from possessing or purchasing firearms for as long as the order remains in effect”).

Per the ERPO statutes, an ERPO must last for a minimum of six months and a maximum of one year. Minn. Stat. § 624.7172, subd. 2(e). Any time within the three months before the expiration of the existing order, a party entitled to petition for an ERPO may request an extension. Minn. Stat. § 624.7173(a). The district court may grant an extension following notice to the respondent and a hearing, upon “the same findings by clear and convincing evidence as required for granting of an initial order.” *Id.*

Background Facts

On March 14, 2024, a law enforcement officer from respondent City of Blaine Police Department (CBPD)¹ filed a petition for both a temporary emergency ERPO and a long-term ERPO against appellant John Mark Luedtke. CBPD filed this petition after assisting Luedtke’s significant other with a civil escort. CBPD officers reported, among other concerns, that during the escort Luedtke was “generally hostile to law enforcement presence,” the couples’ bedroom was “completely covered in tinfoil,” and Luedtke had collected violent images and rhetoric directed toward law enforcement, women, Black, Jewish, and Christian people on his computer.

The district court granted CBPD’s petition for a temporary emergency ERPO, finding that Luedtke posed an immediate and present danger of bodily harm to others and/or taking his life if he possessed a firearm. *See* Minn. Stat. § 624.7174(c). After a hearing on CBPD’s petition for an ERPO, the district court made various findings, including that Luedtke’s “behavior shows that he is paranoid, and that his paranoia, coupled

¹ This officer filed the petition as “the chief law enforcement officer’s designee.” Minn. Stat. § 624.7171, subd. 4(b).

with his violent beliefs and interests, pose a significant danger to others if he were to possess firearms.” See Minn. Stat. § 624.7172, subd. 2(a), (d). It found that CBPD had proven by clear and convincing evidence that Luedtke posed a significant danger to other persons by possessing a firearm. The district court thus approved a one-year ERPO (the original ERPO). We have no record of, and Luedtke does not assert that he took an appeal from the original ERPO.

ERPO Extension Facts

On April 10, 2025, CBPD timely applied to extend the one-year ERPO. The same day, Luedtke filed an application to terminate the ERPO. In response to prompts asking why he does “not pose a significant danger to other persons” and why he is not “at significant risk of suicide by possessing a firearm,” Luedtke only responded with: “THERE IS NO REASON I WOULD BE.” On April 15, Luedtke filed a motion to dismiss CBPD’s application for an extension and a motion to vacate the original ERPO. He requested that the district court dismiss CBPD’s application for an extension because he no longer resided in the original county where the ERPO was granted. He also requested that the district court vacate the original ERPO because it violated his rights under the Second Amendment of the U.S. Constitution.

On April 17, the district court held a hearing on CBPD’s application to extend the ERPO and Luedtke’s motions. In addressing Luedtke’s constitutional challenge, the district court noted that Luedtke had not served the Minnesota Attorney General with a Notice of Constitutional Challenge. The district court determined that Luedtke’s constitutional challenge was not properly before it due to his failure to notify the attorney

general, and it therefore denied his motion to vacate from the bench. In support of its application, CBPD referred to the evidence admitted during the original ERPO hearing and offered testimony from a CBPD officer who testified that he was unaware of any changed circumstances related to the matter. After hearing the parties' arguments, the district court indicated that it would take the matter under advisement. Before closing the hearing, the district court judge stated, "I will, although, verbally order that the Order that's in place right now remain in place until I issue an order on this motion."

The next day, the district court filed a written order denying Luedtke's motions and granting a one-year extension of the ERPO because it found that CBPD proved by clear and convincing evidence that Luedtke posed a significant danger to other persons by possessing a firearm. *See* Minn. Stat. § 624.7173(a). In granting the extension, the district court relied on the factual findings from the original ERPO, the CBPD officer's testimony about the lack of changed circumstances, and the absence of mitigating evidence. The district court explained that it was "inclined to agree with [CBPD] that the mere passage of time does not abate the very real concern for public safety that [Luedtke] poses." It further reasoned that, if Luedtke "wishes to vacate this extension of the ERPO, he is free to do so and will be required to bear the burden of proving that he does not pose a significant danger to other persons by possessing firearms." *See* Minn. Stat. § 624.7173(b). Luedtke moved to vacate the district court's order, which it denied.

Luedtke appeals the district court's order extending the ERPO.²

DECISION

I. Luedtke's constitutional challenges to the ERPO statutes were not properly preserved for appeal.

On appeal, Luedtke first asserts constitutional challenges to the extension of his ERPO under the First, Second, and Fourteenth Amendments to the U.S. Constitution. We need not address the substance of Luedtke's constitutional arguments because we conclude that his challenges to the ERPO statutes are not properly before us.

Under Minn. R. Civ. P. 5A, a party challenging the constitutionality of a statute in district court must “serve the notice and document” challenging the statute “on the Minnesota Attorney General . . . by [United States] mail to afford the Attorney General an opportunity to intervene.”³ The Minnesota Supreme Court has emphasized the importance of timely notice to the attorney general when a party raises a constitutional challenge: “The clear intent of the rule is to provide notice to the attorney general of an attack upon the constitutionality of a legislative act so that he may have the opportunity to defend its constitutionality.” *Elwell v. County of Hennepin*, 221 N.W.2d 538, 544 (Minn. 1974)

² By order, this court construed Luedtke's appeal as taken from the April 18, 2025 order granting an extension of the ERPO even though Luedtke stated in his notice of appeal that he sought review of a July 22, 2025 order.

³ We have interpreted the attorney-general notice requirements to apply only to facial constitutional challenges and have held that notice to the attorney general is not required for challenges on an “as applied” basis. *See Welsh v. Johnson*, 508 N.W.2d 212, 215 n.1 (Minn. App. 1993). We construe Luedtke's arguments as presenting a facial challenge because he has not alleged that the facts of his case differ from the circumstances of any other ERPO respondent. *See McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013) (describing facial challenges).

(construing Minn. R. Civ. P. 24.04, the predecessor to rule 5A). We have declined to consider constitutional challenges when they were not litigated below and when the “party who questions the constitutionality of a state statute” did not comply with the attorney general-notice requirement. *See, e.g., Laliberte v. Dollar Tree, Inc.*, 987 N.W.2d 590, 596 (Minn. App. 2023).

Here, in district court, Luedtke did not properly notify the attorney general of his constitutional challenges. On April 10, 2025, he filed an application to terminate the ERPO. This filing did not identify a constitutional challenge. On April 15, Luedtke filed his motion to dismiss and motion to vacate that alleged the ERPO statutes “exist[] in violation of the Second Amendment.” He did not, however, notify the attorney general of this challenge prior to the district court hearing. The attorney general did not file any documents with the district court or appear at the hearing. During the district court hearing, the court declined to address Luedtke’s constitutional challenge because he had failed to notify the attorney general. On May 20, over a month after the district court hearing, Luedtke notified the attorney general that he would challenge the ERPO statutes.⁴ We conclude that, in district court, Luedtke failed to properly notify the attorney general of his

⁴ We note that both Luedtke and the attorney general’s addendum to our court included a notice of constitutional challenge that Luedtke served on the attorney general pursuant to Minn. R. Civ. App. P. 144. This notice states that, on appeal, Luedtke intended to challenge the ERPO statutes as violating the First, Second, and Fourteenth Amendments. However, this notice was not filed with the Clerk of the Appellate Courts, *see* Minn. R. Civ. App. P. 144 (requiring “the party asserting the unconstitutionality” of a statute to “promptly *file* and serve on the attorney general notice of that assertion” (emphasis added)), and even so, this notice cannot cure other defects in Luedtke’s claims that we have identified in this section.

constitutional challenge based on the Second Amendment and therefore we decline to address this issue.

Furthermore, we decline to review any of Luedtke's constitutional challenges because the record is insufficient to establish whether the ERPO statutes violate his constitutional rights. *See Elwell*, 221 N.W.2d at 545 (holding that the lack of notice to the attorney general does not bar a reviewing court from considering constitutional issues if an issue was adequately raised and considered by the district court and the appellate record is sufficient for review). Luedtke only generally referred to his Second Amendment rights during the district court proceedings. And he did not properly raise First or Fourteenth Amendment challenges to the ERPO statutes before the district court.⁵ More importantly, the district court did not decide whether an extension of the ERPO violated Luedtke's constitutional rights. *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 trial court in deciding the matter before it." (quotation omitted)). Thus, we have neither a record nor a district court decision on which to address the constitutionality of the ERPO statutes.⁶

⁵ We acknowledge that Luedtke made due-process objections at the district court hearing and in an amended motion following the hearing, but he did not challenge the ERPO statutes under the Fourteenth Amendment before the district court.

⁶ Luedtke does not acknowledge his failure to notify the attorney general in his brief to our court despite the district court's determination that such notice was required. In his reply brief, Luedtke argues that we should address his constitutional challenges "in the interest of justice" because his "fundamental civil rights are at stake." He further argues that CBPD is an "arm of the state" such that "[t]he state's interest in protecting the statute is inherently protected." "[A]n argument for reversal that is not raised in an appellant's principal brief

For the foregoing reasons, we conclude that Luedtke’s constitutional challenges to the ERPO statutes are not properly before us, and we decline to address them.

II. The appellant may not collaterally attack the original ERPO.

Luedtke next argues that the district court abused its discretion when it admitted certain evidence and clearly erred in its factual findings. Although Luedtke presents this argument as disputing whether sufficient evidence supported the district court’s decision to extend the ERPO, he only disputes evidence admitted at the original ERPO hearing and factual findings incorporated from the original ERPO.

An ERPO “enjoin[s] and prohibit[s] the respondent from possessing or purchasing firearms for as long as the order remains in effect.” Minn. Stat. § 624.7171, subd. 4(a). Such an order issues upon the filing of a petition for an ERPO, a court hearing, and proof “by clear and convincing evidence that the respondent poses a significant danger to other persons or is at significant risk of suicide by possessing a firearm.” *See id.*, subd. 4; *see also* Minn. Stat. § 624.7172, subd. 2(a). Although part of the same district court file, the original ERPO is different from an order *extending* an ERPO, which issues pursuant to Minn. Stat. § 624.7173.

is forfeited.” *Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 17 (Minn. App. 2013), *rev. denied* (Minn. Mar. 18, 2014); *see also Bremer Bank, Nat’l Ass’n v. Matejcek*, 916 N.W.2d 688, 695 (Minn. App. 2018) (“Generally, issues not raised in an appealing party’s principal brief cannot be raised in a reply brief and may be considered forfeited.” (quotation omitted)). Because Luedtke’s failure to make these arguments in his principal brief denied the respondent and intervenor the opportunity to respond, we decline to address them.

We understand Luedtke’s arguments to constitute a collateral attack on the validity of the original ERPO rather than the sufficiency of the evidence supporting the order granting an extension of the ERPO. A collateral attack is “[a]n attack on a judgment in a proceeding other than a direct appeal.” *Black’s Law Dictionary* 331 (12th ed. 2024) (defining collateral attack); *see also State v. Ness*, 819 N.W.2d 219, 223 (Minn. App. 2012) (applying this definition in the context of a collateral attack on an order), *aff’d*, 834 N.W.2d 177 (Minn. 2013). “As a general rule, a party’s failure to appeal the issuance of a court order precludes a collateral attack on that order in a subsequent proceeding.” *State v. Romine*, 757 N.W.2d 884, 889-90 (Minn. App. 2008), *rev. denied* (Minn. Feb. 17, 2009); *see also State v. Harrington*, 504 N.W.2d 500, 502-03 (Minn. App. 1993) (holding that a defendant who failed to appeal a harassment restraining order in the case in which it was issued could not challenge the constitutionality of that order in a subsequent criminal prosecution for violating it), *rev. denied* (Minn. Sept. 30, 1993). “Purely legal issues are reviewed de novo.” *Davis v. Danielson*, 558 N.W.2d 286, 287 (Minn. App. 1997), *rev. denied* (Minn. Mar. 18, 1997); *see also State v. Ness*, 819 N.W.2d 219 (Minn. App. 2012), *aff’d*, 834 N.W.2d 177 (Minn. 2013) (reviewing de novo whether “a defendant may properly challenge the issuance of a pretrial [domestic abuse no contact order] in a subsequent proceeding for violation of that” order).

In *Harrington*, we rejected the appellants’ attempt to challenge the validity of an underlying harassment restraining order (HRO) in the appellants’ appeal from their criminal conviction for violating the HRO. 504 N.W.2d at 502-03. We explained that, after the district court files an HRO, the Minnesota Rules of Civil Appellate Procedure give

restrained parties a fixed time to pursue a direct appeal of that HRO. *Id.* at 502. Having declined to do so, the appellants were bound by the HRO and could not relitigate its alleged defects as part of their challenge to their subsequent convictions for violating that HRO. *Id.* at 502-03. We therefore held that, “[w]here a party fails to appeal from the issuance of [an HRO], challenges to the validity of the order may not be raised in a subsequent appeal.” *Id.* at 501.

We applied this rule in the civil order-for-protection (OFP) context in *Romine*. 757 N.W.2d at 889-90. There, a district court granted an OFP against someone who was later convicted of violating that OFP. *Id.* at 888-89. In his appeal of his criminal conviction, he sought to challenge the constitutionality of the previously-unchallenged OFP. *Id.* at 889-90. We explained that, because the OFP was a final, appealable civil order and the appellant had initiated but voluntarily dismissed a direct appeal of that OFP, the OFP became final and could not be challenged collaterally in the criminal appeal. *Id.* We held that an individual prosecuted for violating an OFP may not collaterally attack the underlying OFP in the criminal proceeding when the individual had the opportunity to directly appeal the order but had failed to do so. *Id.*

The results in *Harrington* and *Romine* are consistent with the general idea that “[e]ven though the decision of the trial court in the first order may have been wrong, if it is an appealable order[,] it is still final after the time for appeal has expired.” *Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966); *see also In re Welfare of Child(ren) of L.A.B.*, 30 N.W.3d 136, 146 n.9 (Minn. App. 2025) (applying this aspect of *Dieseth*). Thus, the critical aspect of both *Harrington* and *Romine*

was *not* that the attack on the underlying ruling occurred in a proceeding separate from the proceeding in which the HRO and OFP were granted, but that the challenge occurred after those rulings became final by the expiration of the time to appeal those rulings. Here, we conclude that the general rule that applies in the HRO and OFP context also applies to the issuance of an ERPO pursuant to chapter 624. The district court issued the original ERPO following a hearing at which Luedtke appeared. Luedtke could have appealed the grant of the original ERPO. *See* Minn. Stat. § 624.7172; Minn. R. Civ. App. P. 103.03(g). But Luedtke did not challenge the evidentiary determinations or the factual findings in a direct appeal from the original ERPO. And the timeline to appeal that order has passed because CBPD served a written notice of the filing in August 2024. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (setting the default time for an appealable order to be “within 60 days after service by any party of written notice of its filing”). Now, Luedtke raises these disputes to relitigate issues decided in an otherwise final order and to undermine the finality of that order. In this appeal from the order extending the ERPO, Luedtke may not collaterally attack the original ERPO.

III. The district court did not err when it granted CBPD’s application for an extension on April 18, 2025.

Luedtke next claims that the district court lacked authority to extend the ERPO because it issued its written order after the original ERPO expired. Although Luedtke acknowledges that the district court verbally ordered that the ERPO remain in place while it took the matter under advisement, he argues that a district court has “no statutory

authority and no inherent authority to” file a written order extending an ERPO after the original ERPO has expired.

The issue before us is whether Minn. Stat. § 624.7173 (the ERPO-extension statute) permits a district court to grant an extension when the extension request was timely filed but the district court orally granted a temporary extension and then filed its written order granting a one-year extension after expiration of the original ERPO. This issue requires us to review the construction and application of the ERPO-extension statute, a question of law which appellate courts review de novo. *State v. Latino*, 15 N.W.3d 654, 658 (Minn. 2025).

The ERPO-extension statute sets a timeline within which a party may request an extension. A petitioning party may apply for an extension “any time within the three months before the expiration of the existing order.” Minn. Stat. § 624.7173(a). The statute does not impose any corresponding deadline for judicial action on these applications. *See id.* Extensions, when granted, must be for a minimum of six months and a maximum of one year. *Id.*

Here, CBPD timely filed its application for an extension on April 10, 2025. The district court addressed the application at a hearing one week later. At the end of the hearing, the district court stated that it would take the matter under advisement and ordered “that the Order that’s in place right now remain in place until I issue an order on this motion.” The next day, the district court issued its written order granting CBPD’s application for a one-year extension. Luedtke’s argument would require us to impose a requirement on the district court that the legislature did not include in the statute. *See Daley Farm of Lewiston, L.L.P. v. County of Winona*, 15 N.W.3d 828, 834 (Minn. App.

2024) (“Appellate courts cannot add to a statute what the legislature has either purposely omitted or inadvertently overlooked.” (quotation omitted)), *rev. denied* (Mar. 18, 2025). Separately, we note that Minnesota appellate courts have frequently recognized a district court judge’s authority to make oral pronouncements from the bench. *See, e.g., State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002) (holding that when an orally pronounced sentence varies from a written sentencing order, the orally pronounced sentence controls).

Regarding ERPO-extension matters filed before an existing ERPO expires, Ludtke has shown neither that the ERPO-extension statute prohibits the district court from issuing a temporary extension of the existing ERPO from the bench, nor a written extension in these circumstances. Accordingly, we conclude Ludtke has not shown that this district court erred here.⁷

⁷ Luedtke relies on *Roer v. Dunham*, 682 N.W.2d 179 (Minn. App. 2004), to support his argument, but that case is inapposite here. In *Roer*, we addressed whether the district court had the authority to extend a harassment restraining order beyond the maximum length of time set by statute. *Id.* at 181 (citing Minn. Stat. § 609.748, subd. 5(a) (2002)). We concluded that it could not. *Id.* Here, the statute underlying our decision in *Roer* does not govern, and there is no dispute that the district court imposed an extension of the ERPO within the statutory maximum permitted under the ERPO-extension statute. *See* Minn. Stat. § 624.7173(a) (“[T]he maximum length of time of an extension is one year.”). Two other considerations seem relevant, here. First, the standard for extending an ERPO is the same as that for obtaining an ERPO in the first instance. Minn. Stat. § 624.7173(a). Thus, Ludtke’s argument that the extension of his ERPO is defective because that ERPO expired before the district court filed its order extending that ERPO is one that a district court cannot (in an otherwise timely proceeding to extend an ERPO) extend an (expired) ERPO, even though the district court could grant a *new* ERPO. This is illogical. Second, Ludtke’s argument seems to be one that, in an otherwise timely proceeding to extend an ERPO, a district court presented with clear and convincing evidence that someone is a significant danger to others or is at significant risk of suicide cannot grant the ERPO-related relief necessary to protect public safety if, by the time the district court files its order, the

IV. The district court did not err when it determined that CBPD was authorized to file for an extension of the ERPO.

Luedtke's final claim is that the ERPO statutes did not permit CBPD to file its application for an extension in Anoka County because he did not reside there at the time of the extension request. He appears to argue that the ERPO statutes only permit a petitioning party to apply for an extension in the defendant's county of residence at the time of that filing.

The construction and application of a statute are questions of law, which appellate courts review de novo. *Latino*, 15 N.W.3d at 658. Minnesota Statutes section 624.7173(a) provides, in relevant part, that “[u]pon application by any party entitled to petition for an [ERPO], and after notice to the respondent and a hearing, the court may extend the relief granted in an existing” ERPO. This section does not include any filing restriction based on a defendant's residence. *See id.*

Here, CBPD was a “party entitled to petition for an [ERPO].” *See* Minn. Stat. § 624.7171, subd. 4(b) (permitting a “chief law enforcement officer” and a “chief law enforcement officer's designee” to file for relief under the ERPO statutes). In fact, CBPD filed the petition for the original ERPO in this case. Luedtke was properly notified, and the district court held a hearing after which it decided to extend the relief granted in the existing ERPO. We therefore conclude that the district court properly considered and granted CBPD's application for an extension.

ERPO has expired. Thus, neither logic nor public safety favors Luedtke's reading of the statute.

Ludtke also appears to advance an argument under Minn. Stat. § 624.7171, subd. 2(a), which governs the court's jurisdiction in certain circumstances. This provision, however, applies to petitions for ERPOs under section 624.7172 and emergency ERPOs under section 624.7174. Minn. Stat. § 624.7171, subd. 2. It does not apply to applications for an extension of an ERPO under section 624.7173. *See id.* Thus, any argument Ludtke advances under this provision is unpersuasive.

Furthermore, we note that the record does not reflect that Ludtke changed residences to a location outside of Anoka County. He did not file a notice of change of residence or testify regarding any such change during the district court hearing. As such, even assuming Ludtke's proposed interpretation of the ERPO statutes was correct, no record exists to support his assertion that he no longer resides in Anoka County. For all of these reasons, the district court did not err when it determined that CBPD properly filed its application for extension of the ERPO in Anoka County.

Affirmed.