

*This opinion is nonprecedential except as provided by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
A26-0268**

Mike Baer,
Respondent,

vs.

Kelley Luckey F/K/A Kelley Baer,
Appellant,

David Baer,
Defendant.

**Filed September 21, 2026
Affirmed
Schmidt, Judge**

Blue Earth County District Court
File No. 07-CV-26-46

Michael Raymond Baer,¹ Pemberton, Minnesota (pro se respondent)

Kelley Baer, Mapleton, Minnesota (pro se appellant)

Considered and decided by Ede, Presiding Judge; Bratvold, Judge; and Schmidt,
Judge.

¹ The caption in the district court refers to respondent as “Mike Baer,” which we must use on appeal. *See* Minn. R. Civ. App. P. 143.01.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this eviction appeal, appellant Kelley Luckey (f/k/a Kelley Baer) argues that the district court erred by (1) finding her tenancy was month-to-month; (2) rejecting her retaliatory-eviction defense; (3) relying on facts not alleged in the complaint; (4) granting relief inconsistent with the pleadings; and (5) depriving her of due process. Because the record supports the district court's finding of a month-to-month tenancy and because Luckey's remaining challenges do not warrant relief, we affirm.

FACTS

Luckey and respondent Mike Baer were previously married and entered into a lease-to-own agreement for a property in Mapleton. Following expiration of the parties' initial lease, their tenancy continued on a month-to-month basis. After the parties dissolved their marriage, Luckey remained in possession of the property. Baer later purchased the property from the previous owners and became Luckey's landlord.

Prior to Baer's purchase of the property, the parties texted about Luckey's continued occupancy. Luckey proposed to remain on the property until June 2026. Baer responded that he would agree to that term if certain conditions were met, including return of his personal property and dismissal of Luckey's appeal in the dissolution action.

Days after Baer purchased the property, Luckey obtained an ex parte harassment restraining order (HRO) against Baer. After Baer was personally served with the HRO, his counsel mailed Luckey a notice of nonrenewal and a 30-day notice to vacate the property. When Luckey did not vacate the property, Baer commenced an eviction action.

At the eviction hearing, Baer testified that the parties had discussed a lease through June 2026 but had not finalized an agreement. Luckey argued that the text messages constituted an agreement for her to stay until June 2026 and that Baer's conditions were not feasible. Luckey also argued that the eviction action was retaliatory because she obtained the HRO. Luckey further contended that the eviction action was barred by the statute's three-year holdover limitation because she had remained in continuous possession of the property since 2018. *See* Minn. Stat. § 504B.311 (2024).

After the hearing, the district court found that Luckey occupied the premises as a month-to-month tenant, had not made rental payments since Baer purchased the property, and that the text messages reflected negotiations rather than an agreement. The court rejected Luckey's retaliation defense and determined that the statute's holdover provision did not apply to a month-to-month tenancy. The district court entered judgment for Baer.

Luckey appeals.

DECISION

We review a district court's factual findings in an eviction action for clear error, viewing the evidence in the light most favorable to the findings and deferring to the district court's credibility determinations. *Cuate v. Cuate-Dominguez*, 12 N.W.3d 742, 746 (Minn. App. 2024) (quotations omitted). The interpretation of a statute is a question of law that we review de novo. *Id.* (quotation omitted).

I. The district court did not clearly err by finding Luckey’s tenancy was month-to-month or in ruling that the statutory holdover provision does not apply.

Luckey challenges the district court’s finding that her tenancy operated on a month-to-month basis, contending that the parties’ text messages created an agreement allowing her to remain on the premises through June 2026. Luckey further argues that a statute’s three-year holdover provision bars this eviction action. We address each argument in turn.

A. The district court did not clearly err by finding that the text messages did not create an agreement extending Luckey’s tenancy.

Luckey argues the district court clearly erred in finding that she occupied the premises under a month-to-month tenancy because the parties’ text messages established an agreement to allow her to remain at the property until June 2026. We disagree.

After the amended lease-to-own term expired, the parties held over without an agreement for a new term. By statute, the tenancy thereafter continued as a periodic tenancy measured by the shortest interval under the terms of the expired lease. *See* Minn. Stat. § 504B.141 (2024). Here, the expired lease term at the time that Baer purchased the property was month-to-month. Accordingly, the district court did not clearly err by finding that Luckey occupied the premises under a month-to-month tenancy.

The district court’s ruling that Luckey’s tenancy was on a month-to-month basis is a finding of fact that we review for clear error. *See Morrisette v. Harrison Int’l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992). As the district court found, the parties’ text messages do not show any agreement on essential terms to establish a lease through June 2026. Luckey initially asked to stay on the property until June of 2026 but later amended her request and offered to move out a few months later. Although Baer expressed openness to

a lease ending in June 2026, he provided several conditions that Luckey would need to first meet. The final text-message exchange in the record consisted of mutual accusations and a dispute over whether Luckey would dismiss her pending dissolution appeal.

Because the record supports the district court’s finding, we conclude that the district court did not clearly err in finding that “[n]o agreement in amendment of the existing rental relationship or in establishing a new such relationship was ever reached.”²

B. Section 504B.311 does not bar eviction of a month-to-month tenant under these circumstances.

Luckey contends that Minn. Stat. § 504B.311 barred the eviction action because she has been in continuous possession of the property since 2018. *See* Minn. Stat. § 504B.311 (barring eviction action if a tenant holds over for three years). Luckey relies on an alleged extension of the rent-to-own agreement listing only Baer as the tenant/buyer to argue that she has quietly held over for years. But the exhibit that Luckey cites was withdrawn from evidence at the eviction hearing and is not part of the record on appeal. We therefore do not consider it. *Thiele*, 425 N.W.2d at 582-83.

Based on the record before us, Luckey’s occupancy consisted of a lawful, implied periodic tenancy by operation of law rather than by an unlawful holdover. Luckey became

² Luckey asserts that because Baer “is a successor landlord, Minn. Stat. § 504B.151, subd. 3(b) (2024) required him to give [her] written notice by first-class mail before she could be obligated to pay rent.” Because she contends Baer never did this, Luckey argues that the district court erred when it found her tenancy continued on a month-to-month basis. Luckey did not, however, raise this issue to the district court. A party cannot raise a new issue on appeal, “[n]or may a party obtain review by raising the same general issue litigated below but under a different theory.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because this argument was not raised to the district court, we do not consider it here.

an unlawful holdover tenant after she remained in possession of the premises following Baer's lawful termination of her month-to-month tenancy. Because Luckey did not hold over for three years after her tenancy was terminated, the statutory three-year holdover limitation in Minn. Stat. § 504B.311 does not apply.

II. The district court properly rejected Luckey's retaliatory-eviction defense.

Luckey next argues that the district court erred by rejecting her retaliatory-eviction defense under Minn. Stat. § 504B.212 (2024). Luckey contends that Baer sending the notice to vacate one day after Baer was served with the ex parte HRO creates a strong presumption of retaliation under the statute. We disagree.

This retaliation statute prohibits landlords from seeking to recover possession of a property after a tenant reports certain code violations, seeks assistance for a code violation, asks a landlord to make required repairs to the premises, joins a tenant association, or testifies in any proceeding concerning the condition of the premises. Minn. Stat. 504B.212, subd. 2(a)(1)-(6). A tenant's protected activity must fall within one of the statute's specific, enumerated categories to trigger the retaliation defense. *Id.*

Seeking an HRO does not constitute a protected activity under the retaliatory-eviction statute. An HRO is a personal, civil remedy. *See* Minn. Stat. § 609.748 (2024). An individual's right to seek civil protection from personal harassment neither arises from landlord-tenant law, nor relates to a code violation. Because the HRO does not constitute one of the specifically enumerated categories of protected activity under Minn. Stat. § 504B.212, subd. 2, it cannot serve as the legal basis for this retaliatory eviction defense. Accordingly, the district court properly rejected Luckey's retaliatory-eviction defense.

III. The district court did not grant relief inconsistent with the pleadings.

Luckey contends that the district court erred by granting relief on grounds that were neither pleaded nor proved. Specifically, Luckey argues that: (1) Baer failed to prove that the original lease elapsed and is now a month-to-month lease; (2) the complaint's allegation that Baer's brother moved into the property after the parties' divorce was contradicted by the evidence; and (3) the district court improperly based the eviction judgment on the nonpayment of rent. We address these arguments in turn.

A. The month-to-month tenancy determination is supported by the record.

Luckey argues that Baer failed to produce a written lease, which makes the district court's finding of a month-to-month tenancy unsupported by the record. But Luckey submitted a copy of the original lease into evidence during the eviction hearing. That exhibit established the lease's terms, including when it expired. Baer's testimony that he and Luckey continued to occupy the premises after the expiration date established that the lease—pursuant to the statute—converted into a month-to-month tenancy. *See* Minn. Stat. § 504B.141. Baer did not need to produce a new written agreement because Luckey's tenancy obligations arose by operation of law.

B. Luckey's argument about Baer's brother fails.

Luckey argues that the district court erred by relying on facts about Baer's brother that contradicted the complaint. At the eviction hearing, Luckey confirmed that Baer's brother did not live at the property. Based on that confirmation and Baer's brother's failure to appear in the action, the district court entered default judgment against Baer's brother. The arguments related to Baer's brother provides no basis for relief for Luckey.

C. The reference to nonpayment was harmless.

Luckey contends the district court erred by basing its order on nonpayment of rent. While the district court's order referenced nonpayment, Baer's complaint was grounded solely in a holdover theory. We conclude that the court's reference to nonpayment was immaterial to the relief granted. *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115, 135 (Minn. App. 2017) ("this court must ignore a harmless error."), *aff'd* 913 N.W.2d 687 (Minn. 2018). Because the record establishes that Baer lawfully terminated the month-to-month tenancy and that Luckey continued to possess the property after termination, the district court properly granted Baer relief to recover the premises.

IV. The hearing procedures did not deny Luckey procedural due process.

Luckey argues the district court conducted the hearing in a manner that deprived her of due process. In reviewing a procedural due process claim, we first assess whether a person's "protected life, liberty, or property interest" are implicated. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). We agree with Luckey that her protected property rights were implicated because "an eviction is a summary proceeding to determine an individual's possessory rights to real property." *Cuate*, 12 N.W.3d at 746.

We next assess whether the procedures employed were constitutionally sufficient. *Sawh*, 823 N.W.2d at 632. During this eviction action, Luckey received adequate notice, appeared at the hearing, introduced exhibits, cross-examined Baer, and presented closing argument. The record shows that the procedures employed afforded Luckey sufficient procedural due process.

Affirmed.