

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARGARET OLIVER, N/K/A
MARGARET SCHUMACHER,
Appellant,
vs.
BANK OF AMERICA,
Respondent.

No. 57309

FILED

FEB 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a request for sanctions pursuant to a petition for judicial review in a Foreclosure Mediation Program matter. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Proper person appellant Margaret Oliver contends that the district court erred (1) when it declined to find respondent Bank of America (B of A) in bad faith for not engaging in meaningful negotiations at the mediation conducted pursuant to the Nevada Foreclosure Mediation Program (FMP); and (2) when it directed that an FMP certificate issue permitting B of A to proceed with foreclosure. We disagree and affirm.¹

We review a district court's factual determinations deferentially, Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (a "district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence"), and its legal determinations de novo, Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003). Absent

¹Oliver moved for a stay pending appeal, which a panel of this court denied.

factual or legal error, the choice of sanction in an FMP judicial review proceeding is committed to the sound discretion of the district court. Pasillas v. HSBC Bank USA, 127 Nev. ___, ___, 255 P.3d 1281, 1287 (2011).

The evidence consists of the mediator's statement, an affidavit from the lawyer who represented B of A at the mediation, and the oral statements, although unsworn, that Oliver made in response to the district judge's questions at the order-to-show-cause hearing. That evidence demonstrates that B of A provided certified copies of the note and deed of trust and either an appraisal or broker's price opinion, as required by the FMP statute and rules. NRS 107.086(4); FMR 11(3), (6)-(7). The record is fuzzy on what Oliver provided, but it appears she did not produce all of the financial information required of her. According to the mediator's statement, Oliver agreed to surrender the home. Although Oliver disputes the mediator's notation as to her agreement to leave the home and its reference to her prior bankruptcy, she did not present the district court with any evidence to support her allegation that B of A failed to mediate in good faith. On the contrary, the record supports the district court's finding of no bad faith. The district court did not rely on bankruptcy issues to reach its decision and properly analyzed the underlying mediation, concluding that there were no violations of NRS 107.086 or the FMR on its de novo review. See FMR 6(1) (June 1, 2010) (amended and renumbered FMR 21(1) effective March 1, 2011).

We also reject Oliver's challenge to the district court's decision to accept an affidavit from B of A's mediation counsel in lieu of live testimony. The district court did not abuse its discretion in proceeding as it did, see Boulder City v. Cinnamon Hills Assocs., 110 Nev. 238, 244, 871 P.2d 320, 324 (1994) (analyzing a district court's denial of live testimony


under an abuse of discretion standard), particularly since Oliver offered no evidence to contradict the B of A affiant's sworn averments that B of A provided all required documents. See also J.D. Construction v. IBEX Int'l Group, 126 Nev. ___, ___ n.7, 240 P.3d 1033, 1037 n.7 (2010) (approving the use of affidavits in lieu of live testimony in hearings of other real property actions).

Nor did the district court err in denying Oliver's motion for a new trial or reconsideration under NRCP 59. The motion rehashed matters already addressed by the district court and did not meet the standards required for relief under NRCP 59. See NRCP 59(a) (enumerating grounds for relief under NRCP 59); AA Primo Builders v. Washington, 126 Nev. ___, ___, 245 P.3d 1190, 1193 (2010) (discussing relief available under NRCP 59(e) and grounds therefor).

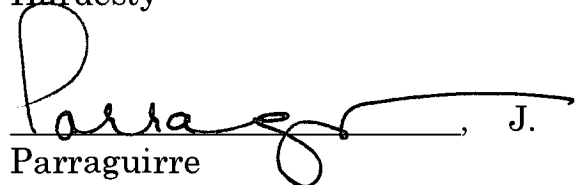
Oliver's remaining arguments lack merit. The district court did not ignore precedent, as other district court orders do not constitute mandatory precedent and are not binding in subsequent cases unless issue or claim preclusion applies, neither of which is argued here. See Camreta v. Greene, 563 U.S. ___, ___ n.7, 131 S. Ct. 2020, 2033 n.7 (2011) ("A decision of a [district judge] is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." (internal quotation marks omitted)). Further, the district court expressly found that appellant's case was factually distinguishable from the cases on which she relied. Last, former FMR 6(6) (now FMR 21(6)) does not apply to a district court or to respondent.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Pickering

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Margaret Oliver
Kravitz, Schnitzer, Sloane & Johnson, Chtd.
Eighth District Court Clerk