

IN THE SUPREME COURT OF THE STATE OF NEVADA

BYRON AND JASNA GEHRING,
Appellants,
vs.
BAC HOME LOANS SERVICING, LP,
Respondent.

No. 57336

FILED

FEB 08 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program, appellants Byron and Jasna Gehring filed a petition for judicial review in district court. Appellants contended that respondent failed to negotiate in good faith because respondent's representative at the mediation did not have authority or access to a person with authority to negotiate a loan modification.¹ See NRS 107.086(4), (5). In opposition to the petition for judicial review, respondent asserted that it satisfied the requirements of the statute by negotiating in good faith during the mediation and continuing negotiations after the mediation concluded.

¹While appellants noted in their petition for judicial review that they did not know whether respondent provided the documents required by NRS 107.086(4), they do not raise this issue on appeal to this court.

In their reply, appellants argued more specifically that respondent was represented at the mediation by an attorney and an individual who participated by phone for only 20 minutes during the 2-hour session. Appellants also maintain that the attorney mischaracterized their income when discussing available programs provided by the lender. The mediator statement reported that "the parties participated but were unable to agree to a loan modification" After a status conference in district court, the parties participated in further discussions but were unsuccessful in reaching an agreement.

The district court heard arguments on the petition and concluded that the parties had negotiated in good faith during and since the mediation, but that they simply could not reach an agreement. It denied the petition without an evidentiary hearing and ordered that a foreclosure certificate be issued unless an appeal was taken.

On appeal, appellants argue that respondent failed to participate in good faith in the mediation. Appellants further argue that the district court erred when it failed to conduct an evidentiary hearing and in considering negotiations between the parties that occurred after the mediation. Respondent asserts that it negotiated at and after the mediation in good faith but could not reach an agreement. The parties strongly dispute the events at the mediation and whether actual negotiations occurred. We conclude that the district court did not abuse its discretion in declining to conduct an evidentiary hearing, in considering post mediation negotiations, and in concluding that the parties participated in good faith. Thus, we affirm the district court's order.

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 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).

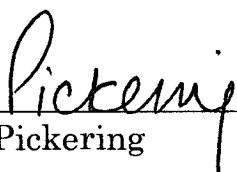
To obtain a foreclosure certificate, a deed of trust beneficiary must strictly comply with four requirements: (1) attend the mediation, (2) participate in good faith, (3) bring the required documents, and (4) if attending through a representative, have a person present with authority to modify the loan or access to such a person. NRS 107.086(4), (5); Leyva v. National Default Servicing Corp., 127 Nev. ___, ___, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with these requirements is necessary).

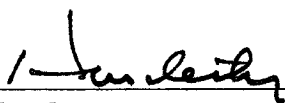
After review of the record on appeal and considering the arguments of counsel, it appears, as the district court noted, that the initial mediation was not conducted "as thoroughly as it could have been." However, the parties, with the court's approval, continued their negotiations after the petition for judicial review was filed. At the hearing on the petition, the court heard arguments from counsel and, with their consent, examined the documentation exchanged by the parties during post-mediation negotiations. Under the facts of this case, the district court did not abuse its discretion by declining to conduct a subsequent

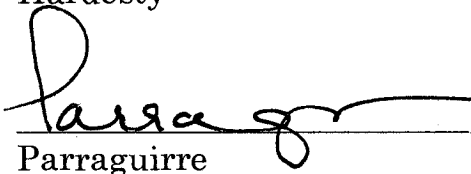
evidentiary hearing or in its consideration of the parties' post-mediation negotiations. See FMR 6.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Pickering

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Patrick Flanagan, District Judge
Gunderson Law Firm
Akerman Senterfitt/Las Vegas
Washoe District Court Clerk