IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL WILLIAM PILGER,
Appellant,
vs.
BANK OF AMERICA,
Respondent.

No. 58441

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 petition for judicial review in a foreclosure mediation matter.[1] Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

This appeal arises out of the Nevada Foreclosure Mediation Program (FMP). Appellant Paul Pilger participated in a loan-modification mediation with respondent Bank of America (B of A). Dissatisfied, Pilger filed a petition for judicial review in district court.[2] After briefing and

[1]Notice of entry of the district court's findings of fact, conclusions of law, and order was given on March 25, 2011. Although appellant did not file a document entitled "notice of appeal," on April 22, 2011, he filed a document styled "opening brief" in district court. We reject B of A's argument that this filing may not be treated as a timely and sufficient notice of appeal under NRAP 3. Cf. Winston Products Co. v. DeBoer, 122 Nev. 517, 526, 134 P.3d 726, 732 (2006) ("[t]he filing of a simple notice of appeal was intended to take the place of more complicated procedures to obtain review, and the notice should not be used as a technical trap for the unwary draftsman." (alteration in original) (quotations and citations omitted)).

[2]In the district court, B of A challenged the timeliness of Pilger's petition for judicial review, arguing that the mediation concluded on December 6, 2010, yet Pilger delayed until January 26, 2011, before filing his petition, making it untimely under both the former and current FMP

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argument, the district court found, as the mediator had, that B of A had produced all required documents and mediated in good faith, even though no agreement was reached. Both the mediator and the district judge attributed the parties' inability to come to a loan modification agreement to Pilger's job loss and associated drop in income, not lender bad faith. They further found that Pilger acted in bad faith by abruptly walking out of the mediation and noted that Pilger states that the home is no longer his "principal abode."[3] Based on these findings, the district court rejected Pilger's request for sanctions and directed that B of A be given the FMP certificate needed for foreclosure.

On appeal, Pilger raises a number of issues. Insofar as relevant to his FMP petition for judicial review,[4] he challenges: (1) B of A's

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rules. B of A sensibly abandons this argument on appeal. Pilger submitted his petition, along with his application for permission to proceed in forma pauperis, on January 7, 2011, within 30 days of his receipt of the mediator's statement, which is timely under the current FMP rules. The earlier receipt date of January 7, not the acceptance-for-filing date of January 26, controls. See Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995) (addressing in forma pauperis submissions).

[3]Because we affirm on other grounds, we do not reach the issue of whether the real estate in question qualified for the FMP as "owner-occupied housing." Compare NRS 107.086(1) (its provisions apply to "any trust agreement which concerns owner-occupied housing") with FMR 7(2) ("'Owner-occupied housing' means housing that is occupied by an owner as his or her primary residence.").

[4]Some of the claims Pilger raises arise under federal law and/or involve collateral matters such as his mother's line of credit, which exceed

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status as beneficiary and note holder, (2) its chain of title, (3) its document production, (4) its representative's telephonic participation at the mediation, (5) its representative's lack of authority at the mediation, (6) its lack of good faith, (7) the mediator's bias, (8) the district court's bias, and (9) the district court's failure to afford him true de novo review.

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).

B of A produced certified copies of the note and deed of trust. These documents, on their face, establish B of A as both the original and current holder and beneficiary of the note and deed of trust, respectively. Pilger acknowledges that this is what B of A's documents establish, but argues that they paint an incomplete picture. He asserts that B of A assigned its interest in the note and deed of trust, but that B of A repudiates this historical fact. Thus, while B of A's production was

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the scope of a petition for judicial review of an unsatisfactory FMP mediation.

ostensibly sufficient, Pilger maintains that it was not in fact sufficient and that there are other, undisclosed parties who hold all or part of the beneficial interest in the note and deed of trust.

The written evidence Pilger offers to support his argument is a report from the Clark County Recorder's Office. This report does not cast doubt on B of A's status. The report notes the substitution of ReconTrust Company, N.A. as trustee, and mentions Mortgage Electronic Registration System (MERS) in connection with the recorded notice of default and election to sell. These references do not report an assignment of the beneficial interest in the note or deed of trust. On the contrary, they refer to the substitution of one trustee for another, and to the recordation of the notice of default and election underlying the mediation.

The deed of trust gives the "Lender [the] option [to] from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder." Substituting one trustee for another does not affect the beneficiary's status under the note and deed of trust. Unlike documents affecting the beneficiary's interest in the deed of trust, which the FMP statutes and rules require be produced to ensure that the right party attends the mediation, see NRS 107.086(4) ("[t]he beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note"); FMR 11(4), the documents by which a substitution of trustee is accomplished do not carry such significance and need not be produced. We thus reject Pilger's assertion that the district court erred in accepting B of A's production as complete and adequate

under the FMP statutes and rules.[5] This disposes of the first three issues listed above.

Pilger's challenge to the authority of the B of A representative and his telephonic participation at the mediation also fail. B of A's lawyer attended the mediation in person and the mediator permitted the client representative to participate by telephone, as it is the mediator's prerogative to permit. See FMR 10(1)(a) ("A beneficiary or its representative shall be physically present, or, if approved by the mediator in advance, and for good cause shown, may participate in the mediation by phone."). Both the mediator and the district court concluded that Pilger's loss of his former, higher-paying job, high monthly expenses, and the amount of the outstanding indebtedness made loan modification unrealistic. Despite this, B of A offered Pilger a 90-day window in which to attempt a short sale, which Pilger rejected. This record provides substantial evidence to support the district court's findings as to the authority of the B of A representatives and conclusion of no bad faith.

As for his claims of bias, Pilger has not sustained his charges of disqualifying bias on the part of either the mediator or the district court judge. We also find no merit to his argument that the district court failed to give this matter the de novo review it was due.

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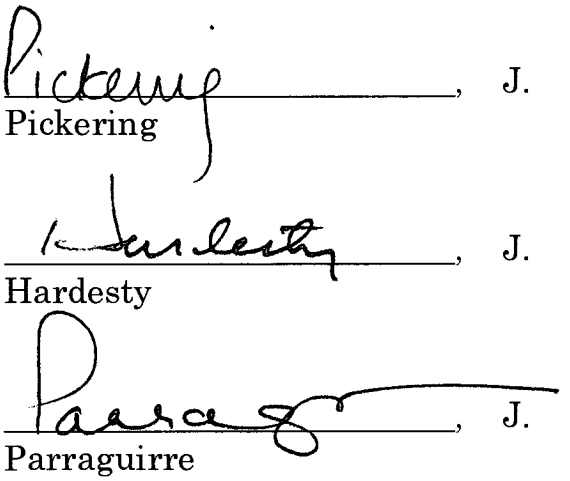
[5]We also note Pilger's reference to the change in servicer name and number and the reference to Freddy Mac in a conversation concerning assumption and/or modification, but these lack record support.

For these reasons, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Pickering

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Paul William Pilger
Akerman Senterfitt/Las Vegas
Eighth District Court Clerk