

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALICIA K. SURGEONER-JERNIGAN,
Appellant,
vs.
CITIMORTGAGE, INC.; AND CAL-
WESTERN RECONVEYANCE
CORPORATION,
Respondents.

No. 60338

FILED

NOV 16 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malin*
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 Program (FMP) matter. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

In 2009, the parties attended a first mediation and reached a loan modification agreement. The modification was never implemented, and the parties disagree over the cause of the agreement's failure. Appellant did not file a petition for judicial review challenging respondents' post-mediation conduct. Instead, on November 24, 2010, respondents recorded a second notice of default. Appellant elected mediation, and the parties attended a second mediation, in which no agreement was reached. Appellant then filed a petition for judicial review. The district court denied the petition and ordered an FMP certificate to issue, permitting the foreclosure to proceed. This appeal followed.

On appeal, appellant contends that the district court erred by (1) not addressing issues related to the first mediation, (2) not sanctioning respondents for failing to produce the original note and deed of trust with assignments and endorsements at the mediations, and (3) depriving her of

the opportunity to address misrepresentations of facts in respondents' response to her petition for judicial review.

This court reviews a district court's factual determinations deferentially, Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (explaining that 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).

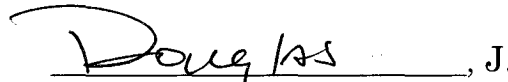
The district court concluded that only the conduct at the second mediation was at issue in the petition for judicial review arising from the second mediation. We agree. After the first mediation, when the loan modification was not executed, appellant could have filed a petition for judicial review seeking to enforce her agreement. FMR 16(3); FMR 21(1). The petition for judicial review is the exclusive remedy for a homeowner seeking to enforce an agreement reached in the mediation program. NRS 107.086(5), (8); FMR 21(1). Appellant did not file a petition for judicial review, and instead elected to mediate based on the second notice of default. Thus, issues concerning the first mediation, including appellant's contentions that she had complied with the mediation agreement, were outside the scope of the petition for judicial review arising from the second mediation, and the district court properly declined to address those issues. FMR 21(1); see Holt v. Regional Trustee Services Corp., 127 Nev. ___, ___, 266 P.3d 602, 608 (2011).

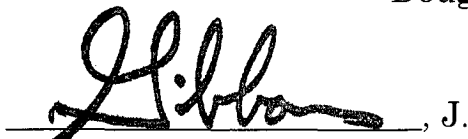
Although appellant also contends that respondents did not present the original note and deed of trust with all endorsements and assignments at the second mediation, the mediator's statement did not note any document deficiencies, and the district court found that respondents' document production satisfied NRS 107.086(4). Beneficiaries, or their representatives, are required to bring an original or certified copy of the deed of trust, promissory note, and all endorsements and assignments thereto. NRS 107.086(4). The record before the district court demonstrated that respondents provided certified copies of these documents in compliance with NRS 107.086(4), and thus, reversal on that ground is unwarranted.

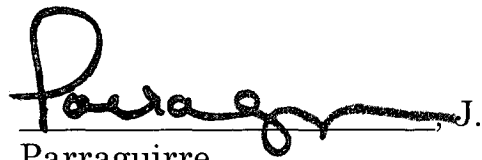
Finally, appellant argues that she was not given the opportunity to address alleged misrepresentations of facts in respondents' response to her petition for judicial review. Appellant was permitted such an opportunity, and did in fact file a reply to the response. Thus, the district court did not deprive appellant of the ability to address respondents' response.

As we perceive no factual or legal error by the district court, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Alicia K. Surgeoner-Jernigan
Pite Duncan, LLP
Eighth District Court Clerk