

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS GILLUM,
Appellant,
vs.
GREEN TREE SERVICING, LLC, A
FOREIGN ENTITY AND QUALITY
LOAN SERVICE, A FOREIGN ENTITY,
Respondents.

No. 61794

FILED

DEC 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of a foreclosure mediation matter. Tenth Judicial District Court, Churchill County; Richard Wagner, Judge.

Appellant Thomas Gillum received a notice of default on a piece of real property he owned and elected to participate in the Foreclosure Mediation Program (FMP). At the mediation, Gillum and respondents Green Tree Servicing, LLC, and Quality Loan Service Corporation (collectively Green Tree) agreed to a loan modification contingent upon Gillum's eligibility. At the time of the mediation, Gillum's current monthly mortgage payment was approximately \$1,930. The proposed agreement calculated a new loan payment of \$1,302 based on 31 percent of Gillum's gross monthly income stated at the time of the mediation. The mediated agreement also required Gillum to submit documentation of his income so that the actual new loan payment could be calculated. After the mediation and upon receiving financial documentation from Gillum, Green Tree approved Gillum for a new loan with a payment of \$2,196.02 per month, approximately \$266.02 higher

than Gillum's previous monthly mortgage payments, but representing 31 percent of Gillum's verified gross monthly income.

Gillum filed a petition for judicial review alleging that Green Tree failed to participate in the mediation in good faith and that such conduct justified the imposition of sanctions. The district court applied a clear and convincing evidentiary burden of proof and denied Gillum's petition for judicial review, finding that there was insufficient evidence that Green Tree participated in the mediation in bad faith. Gillum now appeals arguing that the district court erred and that, under the correct preponderance of the evidence burden, there was sufficient evidence that Green Tree had acted in bad faith.

This court "review[s] a district court's decision regarding the imposition of sanctions for a party's participation in the [FMP] under an abuse of discretion standard." *Pasillas v. HSBC Bank USA*, 127 Nev. ___, ___, 255 P.3d 1281, 1286 (2011). This court will not overturn a district court's factual findings unless such findings are clearly erroneous or unsupported by substantial evidence. *NOLM, LLC v. Cnty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *Jones v. SunTrust Mortg., Inc.*, 128 Nev. ___, ___, 274 P.3d 762, 764 (2012) (internal quotations omitted).

Gillum argues that the district court erred in requiring Gillum to prove Green Tree acted in bad faith by clear and convincing evidence, and that the proper burden of proof was the preponderance of the evidence. However, we need not reach this issue because the record supports the district court's finding that Gillum did not prove bad faith even under the lower preponderance of the evidence standard. See

McClanahan v. Raley's, Inc., 117 Nev. 921, 925-26, 34 P.3d 573, 576 (2001) (explaining that “preponderance of the evidence’ merely refers to [t]he greater weight of the evidence”) (quoting *Black’s Law Dictionary* 1201 (7th ed. 1999)); *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 689 n.58, 191 P.3d 1138, 1151 n.58 (2008) (“[W]e will affirm the district court if it reaches the right result, even when it does so for the wrong reason.”).

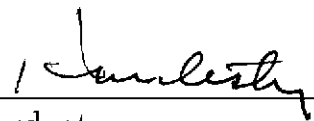
The district court determined that there was insufficient proof that Green Tree participated in the mediation in bad faith, and Gillum has failed to show otherwise. The record evinces that the proposed agreement between Gillum and Green Tree *expressly* calculated Gillum’s monthly payment based on the financial information available at the time of the mediation. The agreement also required Gillum to submit documentation verifying his income, from which the actual payment would be calculated. Once Green Tree received the financial documents provided by Gillum, it proceeded according to the parties’ agreement and calculated a new monthly payment based on 31 percent of Gillum’s verified gross monthly income.

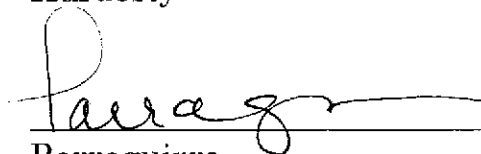
Gillum’s allegations of bad faith center on the fact that the estimated loan payment under the proposed agreement was \$1,302 a month, but that the actual loan modification payment ultimately offered by Green Tree was \$2,196.02. However, Gillum has failed to point to any evidence in the record to demonstrate that Green Tree acted fraudulently by estimating his modified monthly loan payment at \$1,302 pending verification of his gross monthly income. In fact, the record contains no

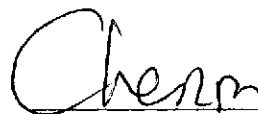
evidence demonstrating how the parties originally calculated Gillum's estimated monthly payment at the time of the mediation.¹

Because Gillum has failed to show Green Tree acted in bad faith, even by a preponderance of the evidence, we conclude that the district court did not abuse its discretion when it denied Gillum's petition. We therefore affirm the district court's denial of the petition for judicial review.

It is so ORDERED


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. Richard Wagner, District Judge
Law Offices of Roderic A. Carucci
McCarthy & Holthus LLP/Reno
Churchill County Clerk

¹At the hearing on Gillum's petition for judicial review, Green Tree's counsel represented to the district court that the estimate was reached based on some financial documents provided by Gillum prior to the mediation as well as his oral representations during the mediation. However, the complete financial documentation provided by Gillum following mediation showed a higher gross monthly income resulting in a higher actual modified loan payment. None of the financial documentation is part of the record on appeal.