

IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNN WELLS,
Appellant,
vs.
WACHOVIA MORTGAGE FSB; WELLS
FARGO BANK, N.A.; AND NATIONAL
DEFAULT SERVICING
CORPORATION,
Respondents.

No. 62751

FILED

MAR 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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; Kathleen E. Delaney, Judge.

In an appeal from a district court order granting or denying judicial review in an FMP matter, this court defers to the district court's factual determinations and reviews de novo the district court's legal determinations. *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. ___, ___, 286 P.3d 249, 260 (2012). To obtain an FMP certificate, a deed of trust beneficiary must: (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 person. NRS 107.086(4) and (5) (2011); *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. ___, ___, 255 P.3d 1275, 1278-79 (2011).

Appellant contends that respondent Wells Fargo Bank, N.A., should have produced the original promissory note and deed of trust at the mediation. We disagree. The FMP statute permits production of certified copies of these documents, see NRS 107.086(4) (2011), and the record on

appeal demonstrates that Wells Fargo produced certified copies of these original documents.¹

Appellant next contends that Wells Fargo needed to record a substitution of trustee before respondent National Default Servicing Corporation (NDSC) recorded the underlying notice of default. We disagree. At the time NDSC recorded the May 2011 notice of default, Wells Fargo was under no obligation to provide a public record of the fact that it had substituted NDSC as the trustee. See NRS 107.028(4) (indicating that an appointment of a new trustee is not effective until a substitution of trustee is recorded); 2011 Nev. Stat. ch. 311, § 5.95, at 1748 (providing an effective date of October 1, 2011, for the bill that enacted NRS 107.028(4)).

Appellant lastly contends that Wells Fargo refused to consider her for a loan modification pursuant to the November 15, 2010, assurance. We first note that, in order to fall within the limited confines of the FMP judicial review process, Wells Fargo's refusal in this regard must have amounted to bad faith. See NRS 107.086(4) and (5) (2011) (setting forth the requirements for a lender attending an FMP mediation); FMR 21(1) (2011) (listing the "limited purposes" for which a petition for judicial review may be filed). Based on the record on appeal, we cannot conclude that the district court clearly erred in determining that Wells Fargo's refusal in this regard amounted to bad-faith mediation. *Edelstein*, 128 Nev. at ___, 286 P.3d at 260 (indicating that, absent clear error, a district court's factual determinations will not be disturbed). In any event, the

¹Appellant contends that Wells Fargo's document certifications failed to comply with NRS 240.1655(2). Having reviewed these certifications, we conclude that they comply with the statute.

record demonstrates that appellant was ineligible for a loan modification under the assurance in light of appellant's previous modification in October 2009.² *Cf. Washoe Cnty. v. Otto*, 128 Nev. ___, ___, 282 P.3d 719, 727 (2012) (recognizing that this court may affirm the district court if it reached the proper result, albeit on alternative grounds). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Kathleen E. Delaney, District Judge
Lynn E. Wells
Snell & Wilmer, LLP/Las Vegas
Snell & Wilmer, LLP/Tucson
Eighth District Court Clerk

²Appellant contends that respondent Wachovia Mortgage FSB breached the 2009 modification agreement and asks this court to enforce that agreement in some manner. We decline to consider this request because, among other reasons, the 2009 agreement was reached at a previous mediation and is therefore outside the limited scope of appellant's underlying petition for judicial review. FMR 21(1) (2011).