

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD CANTU; AND DEA CANTU,
Appellants,
vs.
FEDERAL NATIONAL MORTGAGE
ASSOCIATION; AND SETERUS, INC.,
Respondents.

No. 64785

FILED

JUN 24 2015

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation matter.¹ Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program, appellants filed a petition for judicial review in the district court, which was denied. On appeal from the denial of their petition for judicial review, appellants contend, among other things, that the mediator and the district court both misapplied Foreclosure Mediation Rule (FMR) 11(7) (2013) by allowing the foreclosure to proceed despite respondents' alleged failure to bring all of the required documents to the mediation.² As they did in the district court,

¹The Honorable Abbi Silver, Judge, voluntarily recused herself from participation in the decision of this matter.

²The FMRs became effective on June 30, 2009, and have been amended and renumbered numerous times since. For clarity, the citations in the text are to the FMRs that went into effect on January 1, 2013, and were the FMRs in effect at the time the underlying mediation occurred.

respondents assert on appeal that they provided all of the required documentation to appellants at or prior to the mediation.

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(5); *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. ___, ___, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with these requirements is a necessary predicate to obtaining a foreclosure certificate). If the mediation is unsuccessful and a party files a petition for judicial review in the district court to determine whether sanctions are warranted, FMR 21(6) provides that the district court proceedings "shall be conducted de novo." Absent 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).

Here, appellants allege respondents failed to provide documentation at the mediation demonstrating that the person appearing on behalf of the beneficiary of the deed of trust had the requisite authority to modify appellants' loan. Respondents disagree, asserting that a power of attorney they provided satisfied this requirement, and that all required documents were produced.

At the conclusion of the mediation, the mediator issued a statement that did not adequately address whether respondents provided all the required documentation, including a document demonstrating that the person appearing on behalf of the beneficiary had authority to modify


the loan, despite appellants' uncontroverted statement that they raised the lack of document production at the mediation. Further, in conducting its de novo review, the district court failed to adequately assess whether the necessary documents were presented at the mediation. Rather than hold an evidentiary hearing, the district court simply concluded that respondents complied with the document production requirement based solely on the parties' briefing of the petition and the attached documents.


Our review of the materials before us, however, reveals that none of these attached documents actually demonstrates that respondents provided materials demonstrating that the person appearing on behalf of the beneficiary had authority to modify the loan at or before the mediation. Under these circumstances, the district court's determination that respondents provided all of the required documents is not supported by substantial evidence, *see Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (holding that a "district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence"); *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) ("Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.") (internal quotation marks omitted). As a result, the district court abused its discretion in denying the petition for judicial review and ordering the issuance of a certificate. *See* FMR 21 (2013); *see also Pasillas*, 127 Nev. at ___, 255 P.3d at 1287.

Given the mediator's failure to adequately address the document production issue in the mediation statement and the limited record before us on appeal, we conclude that the ends of justice will be best served by remanding this matter for a second mediation. *See* FMR 1(2)

("The purpose of these rules is to provide for the orderly, timely and cost-effective mediation of owner-occupied residential foreclosures"); *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. ___, ___, 290 P.3d 249, 251 (2012) (noting that bringing the required documents to the mediation allows the homeowners "to satisfy themselves" that the party attempting to foreclose on their home has the legal right to do so). Accordingly, we reverse the district court's denial of the petition for judicial review and remand this matter to the district court for the purpose of ordering the parties to arrange a new mediation session before the same mediator, with each party to pay their own fees.

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao

cc: Hon. Lidia Stiglich, District Judge
Keith J. Tierney
Philip A. Olsen
Wright, Finlay & Zak, LLP/Las Vegas
Washoe District Court Clerk

³Because we conclude appellants are entitled to a new mediation, which will entail new document production, and if unsuccessful, the opportunity for new judicial review, we do not reach the parties' other arguments.