

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT MOORE,
Appellant,
vs.
MTC FINANCIAL INC. D/B/A
FINANCIAL TRUSTEE CORPS.; AND
THE BANK OF NEW YORK MELLON,
Respondents.

No. 67317

FILED

AUG 31 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
Tracie K. Lindeman
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program (FMP), at which appellant refused to discuss loan modification or non-retention alternatives to foreclosure, appellant filed a petition for judicial review in the district court. The district court denied that petition and this appeal followed.

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 have access to such a person. NRS 107.086(5), (6); *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).


On appeal, appellant argues the district court should have applied judicial estoppel to vacate the mediation and halt the foreclosure process while his federal case regarding his mortgage proceeds. We conclude this argument lacks merit and we therefore affirm the denial of judicial review. As the district court determined, the relief appellant's estoppel-based arguments sought was beyond the limited scope of the judicial review process. *See* FMR 22(2) (setting forth the limited issues that may be considered in a hearing arising out of a petition for judicial review of a foreclosure mediation).

Moreover, as recognized by the district court, the application of judicial estoppel against respondents would have been inappropriate in this case as the respondents to this appeal are not the same parties as the defendants in the federal case. *See Mainor v. Nault*, 120 Nev. 750, 765, 101 P.3d 308, 318 (2004) (providing that one requirement for judicial estoppel to apply is that the same party must make inconsistent statements in two different judicial proceedings). Finally, the record demonstrates that respondents complied with the statutory requirements for obtaining an FMP certificate set forth in NRS 107.086(5). Under these circumstances, we conclude that the district court properly denied the petition for judicial review. *See Edelstein*, 128 Nev. at ___, 286 P.3d at 260 (providing that, in reviewing a district court's decision on a petition for

judicial review arising from a FMP matter, the court's factual determinations are entitled to deference while its legal determinations are reviewed de novo). Accordingly, we affirm the district court's denial of judicial review.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Robert Moore
Akerman LLP/Las Vegas
Malcolm Cisneros
Eighth District Court Clerk