

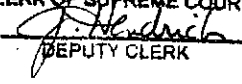
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GIOVANNA WESTWOOD,
Appellant,
vs.
RMS & ASSOCIATES, A NEVADA
CORPORATION; JP MORGAN CHASE
BANK, N.A., A/K/A JP MORGAN
CHASE BANK, NATIONAL
ASSOCIATION; CHASE HOME
FINANCE, LLC; AND NATIONAL
DEFAULT SERVICING
CORPORATION,
Respondents.

No. 69023

FILED

JUN 23 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment, certified as final pursuant to NRCP 54(b), in a real property action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Appellant Giovanna Westwood sued respondents RMS & Associates; JP Morgan Chase Bank, N.A., also known as JP Morgan Chase Bank, National Association; Chase Home Finance, LLC; and National Default Servicing Corporation¹ (collectively, Chase) seeking to stop the

¹The challenged order specifically granted summary judgment only in favor of the Chase respondents and certified that order as final pursuant to NRCP 54(b). The caption on appeal, however, lists all of the district court defendants as parties to this appeal, despite the fact that claims remain pending in the district court against some of them. Accordingly, the clerk of the court shall conform the caption in this case to the caption on this order so as to include only those parties who are proper parties on appeal.

foreclosure of her property. Chase filed a motion for summary judgment and to expunge the lis pendens Westwood had recorded against the property, which Westwood opposed. Ultimately, the district court granted summary judgment in favor of Chase and expunged the lis pendens. This appeal followed.

As in the district court, on appeal Westwood argues that Chase lacked the ability to foreclose on her property. We disagree. Westwood executed a note on the subject property in favor of RMS & Associates. She also executed a deed of trust to secure that note which named Mortgage Electronic Registration Systems, Inc. (MERS) as the nominee and RMS as the lender. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 512, 286 P.3d 249, 254 (2012) (“In Nevada, promissory notes on real estate loans are typically secured by deeds of trust on the property.”). Thereafter, RMS endorsed and gave possession of the note to JP Morgan Chase Bank via its attorney-in-fact, which was a proper transfer of the note and gave JP Morgan Chase Bank the ability to enforce it. *See* NRS 104.3109(2) (“A promise or order that is payable to order [by identifying a person,] is payable to the identified person.”); NRS 104.3201(2) (“[I]f an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder.”); *Leyva v. Nat’l Default Servicing Corp.*, 127 Nev. 470, 478-79, 255 P.3d 1275, 1280 (2011) (recognizing that NRS 104.3109(2) and 104.3201(2) apply to the transfer of mortgage notes).

As for the deed of trust, MERS, on behalf of RMS, assigned it to JP Morgan Chase Bank in an executed corporate assignment. This signed writing demonstrates that JP Morgan Chase Bank is now the

beneficiary of the deed of trust. *See Edelstein*, 128 Nev. at 522, 286 P.3d at 260 (“To prove that a previous beneficiary properly assigned its beneficial interest in the deed of trust, the new beneficiary can demonstrate the assignment by means of a signed writing.”). Thus, because JP Morgan Chase Bank was the holder of the mortgage note and the beneficiary of the deed of trust, it had the right to foreclose on Westwood’s home. *See id.* at 524, 286 P.3d at 262 (concluding that the bank had the ability to foreclose on the property at issue because it was entitled to enforce both the deed of trust and the note).

Although Westwood raises challenges to these documents in her informal appellate brief—such as arguing that certified originals were not presented, that the signatures on the documents were not verified by an expert, and that a power of attorney did not reference Westwood’s property—we can find no law in Nevada that imposes such requirements on the documents required to demonstrate an ability to foreclose on a property under the circumstances presented by this case.² As such, we decline to reverse the award of summary judgment on these grounds.

Finally, Westwood argues that her rights to due process were violated because the district court did not consider her factual evidence in opposition to summary judgment. The record on appeal, which includes a

²While Nevada’s Foreclosure Mediation Program does require that lenders present certain original or certified copies of documents demonstrating their ability to foreclose, *see* NRS 107.086(5), those rules do not apply in this case as Westwood declined mediation. *See* NRS 107.086(3) (allowing a homeowner to waive mediation).

transcript of the summary judgment hearing, demonstrates that the district court reviewed all pertinent evidence submitted to it to determine whether Chase had the ability to foreclose. Specifically, while it appears that Westwood filed certain exhibits in the district court that were unattached to any other filing, Chase presented the same documents to the district court at the summary judgment hearing and the district court did not exclude them. Thus, it is clear that the district court considered the evidence submitted by Westwood and her due process argument fails.³

With no genuine issue of material fact remaining as to Chase's ability to foreclose, Chase was entitled to summary judgment as a matter of law. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029

³Westwood also appears to argue that the district court did not consider or give proper weight to certain other evidence she purportedly presented. To the extent this argument is intended to address additional evidence beyond that which we have already addressed in this order, Westwood fails to present a cogent argument on this issue as it is unclear what evidence she is referring to. As a result, we decline to consider this issue. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate court need not consider claims that are not cogently argued on appeal).

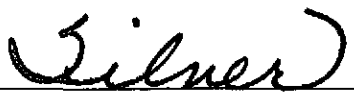
Westwood further argues that Chase improperly presented evidence to the district court by approaching the bench and that the note was discharged as a result of Westwood's alleged discharge from bankruptcy. Because Westwood failed to object to or otherwise challenge the presentation of evidence or present arguments regarding her bankruptcy in the district court, she has waived these arguments on appeal and, thus, we will not consider these issues. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

(2005) (explaining the standard for granting summary judgment). Thus, the district court properly granted summary judgment in favor of Chase and expunged the lis pendens on the property. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jerry A. Wiese, District Judge
Giovanna Westwood
Tiffany & Bosco, P. A.
Santoro Whitmire
Smith Larsen & Wixom
Eighth District Court Clerk