

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYANNA K. POLLARD; AND JOYTAYA
S. POLLARD,
Appellants,
vs.
FLAGSTAR BANK FSB,
Respondent.

No. 70286

FILED

JAN 24 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
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.

After receiving a notice of default, the appellant homeowners elected to participate in Nevada's Foreclosure Mediation Program with the respondent bank. Respondent requested various documents from appellants to determine their eligibility for a loan modification, and the parties subsequently agreed to continue the mediation twice to allow appellants to comply with the request and respondent to review any new submissions. Ultimately, respondent denied appellants a modification because it could not verify their eligibility with the documents that they provided. The mediation was then terminated without an agreement.

Appellants later petitioned for judicial review, arguing, among other things, that respondent did not participate in the mediation in good faith because it refused to consider a modification based on the documents that they provided. The district court found that appellants did not comply with respondent's document request, despite the continuances, and failed to qualify for a loan modification. As a result, the district court concluded that respondent participated in the mediation in good faith and

denied appellant's petition for judicial review, thereby allowing a foreclosure certificate to issue. This appeal followed.


On appeal, appellants argue that respondent improperly requested additional documents in order to assess their eligibility for a loan modification shortly before the mediation. But the record lacks sufficient evidence to demonstrate that respondent's request was untimely. See FMR 12 (amended and renumbered as FMR 13 (effective January 13, 2016)) (specifying the timeframe during which the beneficiary may submit document requests to the homeowner); see also *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that appellant is responsible for making an adequate appellate record and when "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision"). Moreover, after respondent submitted its request to appellants, they agreed to a continuance of the mediation so that they could comply with that request with an eye towards negotiating a modification of the loan. Under these circumstances, we cannot conclude that the timing of this supplemental document request from respondent demonstrates bad faith participation in the mediation process.


Aside from the foregoing argument, appellants present only a vague assertion that respondent otherwise failed to participate in the mediation in good faith. But in making this assertion, they do not reference or further address the underlying basis for the district court's decision—that appellants, by their own admission, failed to provide all of the documents respondent had requested in order to assess their eligibility for a modification. Consequently, aside from the previously rejected timing argument, appellants have waived any further challenges to this determination. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on

appeal are deemed waived). And while appellants present several other arguments in their informal brief, those arguments are either too conclusory for effective appellate review, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that appellate courts need not address issues that lack cogent argument), improperly raised for the first time on appeal, *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 . . . is deemed to have been waived and will not be considered on appeal."), or are otherwise without merit.

As a result, appellants have failed to demonstrate that the district court abused its discretion by denying their petition for judicial review. *See Pasillas v. HSBC Bank USA*, 127 Nev. 462, 468, 255 P.3d 1281, 1286 (2011) (providing that a petition for judicial review that relates to a party's participation in a foreclosure mediation is reviewed for an abuse of discretion). Accordingly, we affirm the district court's denial of appellants' petition for judicial review.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Joytaya S. Pollard
TyAnna K. Pollard
Tiffany & Bosco, P. A.
Eighth District Court Clerk