

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMIR ALBORZI,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 69906

FILED

APR 28 2017

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

ORDER OF AFFIRMANCE

Appellant Amir Alborzi appeals 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 an unsuccessful foreclosure mediation, appellant Amir Alborzi petitioned for judicial review, alleging that, while respondent Nationstar Mortgage, LLC, brought a sworn statement to the mediation indicating it possessed his original note, it actually possessed a forgery. Thus, Alborzi asked the district court to order a forensic examination of the documents that Nationstar believed to be his original note and deed of trust. Alborzi also alleged that the deed of trust had not been validly assigned to Nationstar. The district court denied Alborzi's petition, finding that Nationstar brought the required documents to the mediation and that a comparison of the materials Nationstar brought to the mediation to the originals revealed no basis for his forgery allegation. This appeal followed.

On appeal, Alborzi argues the district court improperly denied his request for a forensic examination, reiterating his prior assertion that

Nationstar did not possess his original note, but rather, one that had been forged. Preliminarily, it does not appear that the district court could have determined that Alborzi's forgery allegation was meritless by comparing the allegedly forged note to the copy of that document that Nationstar brought to the mediation. Nevertheless, "[t]his court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason." *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010).

In this regard, the record reveals that, while Alborzi presented a self-serving affidavit summarily asserting that his allegations of forgery were true, he presented no other evidence to substantiate these allegations or otherwise show that Nationstar had relied on a forged note in pursuing foreclosure. Instead, he merely pointed to his unsupported allegations, which he now argues on appeal should have made the district court skeptical as to whether Nationstar actually possessed his original loan documents.¹ Given that there is nothing in the record, aside from

¹Alborzi also asserts that Nationstar's counsel falsely represented during a hearing before the district court that she smudged his signature on the note to verify that it was authentic, but he does not argue that the court relied on that representation in rejecting his petition for judicial review. Moreover, Alborzi did not request the transcript from the hearing before the district court, and, therefore, we must presume that the missing transcript supported the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2008) (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[] the district court's decision").

Alborzi's affidavit, to support his assertion that Nationstar relied on a forgery in pursuing foreclosure,² we conclude that the district court properly denied Alborzi's request for a forensic examination and affirm its decision in this regard. *Cf. Clauson v. Lloyd*, 103 Nev. 432, 434-35, 743 P.2d 631, 633 (1987) (holding that a self-serving affidavit will not support summary judgment).

Alborzi next argues that Nationstar did not bring a valid assignment to the mediation showing that the deed of trust had been assigned to it. Under NRS 107.086(5), the beneficiary must bring each assignment of the deed of trust to the mediation. Here, the record reflects that Alborzi initially executed a deed of trust, naming Mortgage Electronic Registration Systems, Inc. (MERS), as the beneficiary and nominee of Countrywide Home Loans, Inc. MERS then assigned the deed of trust to BAC Home Loans Servicing, LP, FKA Countrywide Home Loans Servicing, LP. Thereafter, two documents were executed that purported to assign the deed of trust to Nationstar, the first designated Countrywide Home Loans, Inc. as the assignor (the Countrywide assignment) and the second designated Bank of America, N.A., Successor by Merger to BAC

²To the extent Alborzi argues that issues regarding the chain of title of the deed of trust suggest that Nationstar was relying on a forged note to foreclose on his property, that contention is without merit. And as discussed below, Nationstar properly addressed the issues with the assignments of the deed of trust by obtaining a corrected assignment of the deed from Bank of America to Nationstar, thereby establishing a valid chain of title for the deed of trust from the original beneficiary to Nationstar.

Home Loans Servicing, LP, FKA Countrywide Home Loans Servicing, LP, as the assignor (the Bank of America assignment).


Initially, as Nationstar correctly conceded below, the Countrywide assignment was ineffective in light of MERS' prior assignment to BAC, which thereby acquired the beneficial interest in the deed of trust, including the right to make a subsequent assignment of that document. *See Zakarian v. Option One Mortg. Corp.*, 642 F. Supp. 2d 1206, 1213 (D. Haw. 2009) ("Once a valid and unqualified assignment is made, all interests and rights of the assignor are transferred to the assignee[, and] the assignor loses all control over the thing assigned . . ."); *cf. Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 740, 917 P.2d 447, 448 (1996) (providing that "when a tort action is assigned, the assignor loses the right to pursue the action"). And while the record does not include an assignment from BAC to Bank of America, Bank of America became the beneficiary of the deed of trust, prior to its assignment of that document to Nationstar, through a merger with BAC. *See* NRS 92A.250(1)(b) ("When a merger takes effect . . . [t]he title to all real estate and other property owned by each merging constituent entity is vested in the surviving entity without reversion or impairment.").


While Alborzi attempts to overcome this documentary evidence by summarily asserting that the Bank of America assignment was fraudulent, nothing in the record supports that assertion. Thus, the record establishes a valid chain of title for the deed of trust from the original beneficiary to Nationstar, and Alborzi therefore failed to show that the district court clearly erred in finding that Nationstar brought all the required documents to the mediation. *See Edelstein v. Bank of N.Y.*

Mellon, 128 Nev. 505, 521-22, 286 P.3d 249, 260 (2012) (recognizing that the appellate court defers to the district court's factual findings so long as they are not clearly erroneous and are supported by substantial evidence).

Given the foregoing, Alborzi has not identified an abuse of discretion in the district court's decision to deny his 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 decision.

It is so ORDERED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Amir Alborzi
Akerman LLP/Las Vegas
Eighth District Court Clerk

³We have considered Alborzi's remaining arguments and conclude that they do not provide a basis for reversal.