IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATHANIEL AMANTE, AN INDIVIDUAL; AND LIGAYA AMANTE, AN INDIVIDUAL,
Appellants,
vs.
BAYVIEW LOAN SERVICING, LLC; AND BANK OF NEW YORK MELLON,
Respondents.

No. 72532

FILED

APR 09 2018

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

ORDER OF AFFIRMANCE

Nathaniel and Ligaya Amante 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 defaulting on their home loan, the Amantes elected to participate in Nevada's Foreclosure Mediation Program (FMP) with respondent Bank of New York Mellon, and its servicer, respondent Bayview Loan Servicing, LLC, which appeared at the mediation. While the mediation was unsuccessful, the mediator found that Bayview complied with the requirements set forth in NRS 107.086(5)[1] and FMR 13(7),[2] and,

[1]NRS 107.086 was amended effective June 12, 2017, 2017 Nev. Stat., ch. 571, § 2, at 4091-96, but those amendments do not affect the disposition of this appeal, as they were enacted after the underlying mediation.

[2]The 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 13, 2016, and were the FMRs in effect at the time the underlying mediation occurred.

as a result, the FMP administrator recommended that a foreclosure certificate issue. *See Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 475-76, 255 P.3d 1275, 1278-79 (2011) (explaining that compliance with the rules set forth in NRS 107.086(5) and the FMRs is a predicate to the issuance of a foreclosure certificate).

The Amantes then petitioned for judicial review, arguing, among other things, that Bayview failed to produce documentation necessary to establish standing to foreclose or its authority to appear on behalf of the beneficiary. Respondents opposed the Amantes' petition on both grounds. After the resulting hearing, the district court determined that respondents satisfied the FMP's requirements and, as a result, it denied the Amantes' petition. This appeal followed.

On appeal, the Amantes assert that the deed of trust was unenforceable on the ground that respondents did not establish that they were entitled to enforce the note. It is true that a party only has standing to foreclose if it is entitled to enforce both the deed of trust and the note. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 514, 286 P.3d 249, 255 (2012) ("[T]o have standing to foreclose, the current beneficiary of the deed of trust and the current holder of the promissory note must be the same."). Here, respondents' documentation included an assignment of the deed of trust from the original beneficiary to the Bank of New York Mellon FKA the Bank of New York, as trustee for the certificateholders of the CWALT, Inc., Alternative Loan Trust 2007-HY8C Mortgage Pass-Through Certificates, Series 2007-HY8C (referred to as BNYM). And the Amantes do not dispute that respondents demonstrated that the beneficiary of the deed of trust was BNYM. Thus, because respondents' documentation also established that

BNYM was entitled to enforce the promissory note, as discussed below, we discern no basis for relief in this regard.

As briefly noted above, the Amantes also challenge whether respondents established that BNYM was entitled to enforce the note, specifically arguing that its documentation included several undated endorsements. *See id.* The Amantes' argument in this regard fails, however, as an endorsement of a negotiable instrument need not be dated to be valid, *see* NRS 104.3204(1) (explaining that a signature on a negotiable instrument can, standing alone, constitute an endorsement), and because the successive endorsements on the note do not raise any reasonable questions with regard to their chronological order. *See Edelstein*, 128 Nev. at 510 n.3, 522-24, 286 P.3d at 253 n.3, 261-62 (reviewing undated endorsements but concluding that the beneficiary was entitled to enforce the note).

In particular, the note included a special endorsement from the original lender, Hillsborough Corporation, to Countrywide Bank, FSB, and a second special endorsement from Countrywide Bank, FSB, to Countrywide Home Loans, Inc. The note also included an endorsement in blank by Countrywide Home Loans, Inc. And once Countrywide Home Loans, Inc. endorsed the note in blank, it became payable to bearer, meaning that the entity possessing the note was entitled to enforce it. *See* NRS 104.3109(3) (explaining that "[a]n instrument payable to an identified person may become payable to bearer if it is endorsed in blank"); NRS 104.3205(2) (providing that when a negotiable instrument is endorsed in blank, it "becomes payable to bearer and may be negotiated by transfer of possession alone"). Thus, by certifying that it was in actual possession of the original note and providing documentation to show that it acted as the

agent for BNYM, as discussed below, Bayview established that BNYM was entitled to enforce the note. *See Edelstein*, 128 Nev. at 523-24, 286 P.3d at 261-62 (recognizing that the beneficiary is deemed to have actual possession of the note when its agent physically possesses that document). As a result, the Amantes failed to demonstrate that relief is warranted on this ground.

The Amantes next dispute whether Bayview established that it was authorized to modify their loan on behalf of BNYM on the ground that its limited power of attorney did not specifically identify who was authorized to act for BNYM or reference their specific property. *See* NRS 107.086(5) (providing that when a third-party representative appears at the mediation on behalf of the beneficiary, "that person must have authority to negotiate a loan modification . . . or have access at all times during the mediation to a person with such authority"). But a review of that document demonstrates that it authorized Bayview to modify loans on behalf of BNYM, which, as discussed above, was the beneficiary of their deed of trust. Thus, we conclude that the Amantes failed to demonstrate that Bayview lacked authority to modify their loan on behalf of BNYM.[3]

While the Amantes further assert that Bayview failed to produce any of the mandatory documentation, including the documents referenced above, either prior to or at the mediation as required, both the

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[3]Insofar as the Amantes assert that the representative from Bayview who appeared at the mediation lacked authority to act on behalf of BNYM, their assertion fails as they present no specific argument or explanation as to why they believe the representative lacked authority to act despite the limited power of attorney. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument). As a result, we need not address the Amantes' argument with regard to whether Bayview's counsel, who also appeared at the mediation, had authority to modify their loan.

mediator and the district court found that Bayview complied with the FMP's document production rules. *See* NRS 107.086(5) (requiring the beneficiary to produce certain documents at the mediation); FMR 13(7) (providing that the beneficiary must do the same at least 10 days before the mediation). And because the Amantes failed to provide this court with a transcript from the hearing on their petition for judicial review, we presume that the transcript supported the district court's finding in this regard. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (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).

Given the foregoing, the Amantes failed to establish that the district court abused its discretion in denying their petition and directing that a foreclosure certificate issue.[4] *See Leyva*, 127 Nev. at 480, 255 P.3d at 1281 (reviewing a district court's decision regarding a petition for judicial review in an FMP matter for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

[4]Having reviewed the Amantes' remaining arguments, we discern no basis for relief.

cc: Hon. Kathleen E. Delaney, District Judge
Ligaya Amante
Nathaniel Amante
Zieve, Brodnax & Steele, LLP
LJ Law
Eighth District Court Clerk