

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN E. CODY,
Appellant,
vs.
WILMINGTON SAVINGS FUND
SOCIETY, FSB, D/B/A CHRISTIANA
TRUST, NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS
TRUSTEE FOR BCAT 2015-14BTT,
Respondent.

No. 72603

FILED

AUG 27 2018

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

ORDER OF AFFIRMANCE

Brian E. Cody 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 defaulting on his home loan, Cody elected to participate in Nevada's Foreclosure Mediation Program (FMP) with respondent Bank of Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust, which participated in the mediation through its servicer. While the mediation was unsuccessful, the mediator found that Wilmington complied with the requirements set forth in NRS 107.086(5)¹ and FMR 13(7),² and, as a result, the FMP administrator recommended that a foreclosure certificate issue.

¹NRS 107.086 was amended effective June 12, 2017, 2017 Nev. Stat. ch. 571, § 2, at 4091-96, but that amendment does not affect the disposition of this appeal, as it was enacted after the underlying mediation.

²The 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.

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).

Cody then petitioned for judicial review alleging, as relevant here, that he previously accepted a loan modification from Wilmington's predecessor in interest, that Wilmington refused to acknowledge that modification at the mediation, that Wilmington presented an incorrect loan balance at the mediation, and that Wilmington therefore did not participate in the mediation in good faith. Wilmington opposed Cody's petition on both grounds. Following supplemental briefing and two hearings on the matter, the district court denied Cody's petition, concluding that his allegations were outside the scope of a petition for judicial review and lacking in evidentiary support. This appeal followed.


On appeal, Cody challenges the denial of his petition for judicial review, arguing that the district court should have conducted an evidentiary hearing with regard to his loan balance and that the court mistakenly focused on whether he accepted a loan modification rather than determining whether Wilmington was adequately apprised of the status of his loan at the time of the mediation. But one of the district court's alternate bases for denying Cody's petition was that his allegations surrounding the loan balance and loan modification were outside the scope of a petition for judicial review. *See* FMR 23(2) (setting forth the scope of a petition for judicial review in an FMP matter). And Cody does not argue that the

district court's decision in this regard was erroneous.³ 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); see also *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 521-22, 286 P.3d 249, 260 (2012) (reviewing legal questions de novo). Consequently, Cody failed to demonstrate that the district court abused its discretion in denying his petition for judicial review. See *Leyva*, 127 Nev. at 480, 255 P.3d at 1281 (reviewing the denial of a petition for judicial review in an FMP matter for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴

 _____, C.J.

Silver

 _____, J.
Tao

 _____, J.
Gibbons

³Insofar as Cody contends that the district court could consider whether Wilmington was adequately apprised of the status of his loan, we decline to consider that contention as it is unsupported by cogent argument or relevant legal authority. 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 or relevant legal authority).

⁴Given our disposition of this appeal, we need not consider Cody's remaining arguments.

cc: Hon. Kathleen E. Delaney, District Judge
Janet Trost, Settlement Judge
Brian E. Cody
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk