

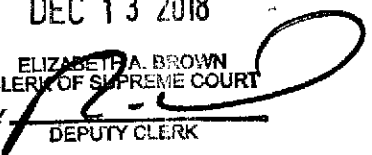
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARY LAW,  
Appellant,  
vs.  
FEDERAL NATIONAL MORTGAGE  
ASSOCIATION; AND GREEN TREE  
SERVICING, LLC,  
Respondents.

No. 74448-COA

**FILED**

DEC 13 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING AND VACATING POST-JUDGMENT ORDER*

Mary Law appeals from a district court order granting a petition for judicial review and post-judgment orders resolving various motions for post-judgment relief in a foreclosure mediation matter. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Law and respondent Green Tree Servicing, LLC, participated in an unsuccessful foreclosure mediation. But because the mediator found that Green Tree failed to produce each assignment of the deed of trust, the Foreclosure Mediation Program (FMP) administrator recommended that a foreclosure certificate not issue. Law petitioned for judicial review, seeking additional sanctions on the ground that Green Tree and respondent Federal National Mortgage Association (Fannie Mae) did not satisfy the FMP's requirements. But the district court disagreed and denied Law's petition.

Law appealed, and this court rejected her arguments regarding the district court's good faith finding. *Law v. Fed. Nat'l Mortg. Ass'n*, Docket No. 69469 (Order of Reversal and Remand, December 28, 2016). But we also determined that Green Tree did not bring each assignment to the mediation, that the district court erred in reaching a contrary conclusion, and that factual questions remained regarding the extent to which Green

Tree and Fannie Mae were required to participate in the mediation. *Id.* As a result, we reversed and remanded with instructions for the district court to consider whether the above issues warranted sanctions. *Id.*

On remand, the district court found that Green Tree was authorized to negotiate at the mediation based on an agreement between it and a prior beneficiary, but imposed additional sanctions based on Green Tree's failure to bring each assignment to the mediation. In particular, the district court awarded Law \$20,000 in attorney fees and costs as a credit against her arrearages and reduced her remaining arrearages by approximately \$37,000. Nevertheless, the district court authorized Green Tree to proceed with foreclosure if Law did not reinstate her loan within 60 days of the entry of the court's order by paying her remaining arrearages.

Post-judgment disputes arose between the parties, and while the district court did not grant their requests, it explained in its October 12, 2017, order that, because Law did not reinstate her loan as directed, respondents could initiate a new foreclosure proceeding and foreclose on her home without participating in another mediation. This appeal followed.

On appeal, Law argues that additional sanctions beyond those awarded below were warranted based on Fannie Mae's failure to participate in the mediation, while respondents dispute whether Fannie Mae was even required to participate.<sup>1</sup> Initially, the district court did not address whether Fannie Mae was required to participate in the mediation despite this court's express instruction to do so in the December 26 order of reversal and

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<sup>1</sup>The parties do not challenge the district court's decision to impose additional sanctions beyond the denial of a foreclosure certificate based on Green Tree's failure to bring each assignment of the deed of trust to the mediation, and, therefore, we affirm that decision.

remand, ostensibly because the court found, based on an agreement between Green Tree and a prior beneficiary, that Green Tree had authority to negotiate despite the incomplete chain-of-title for the deed of trust.

But the FMP's rules require the beneficiary to attend the mediation, either personally or through a representative. See NRS 107.086(5)<sup>2</sup> (providing that the beneficiary or a representative must attend the mediation); FMR 11(1)(a) (requiring the same).<sup>3</sup> And to establish the identity of the beneficiary, the foreclosing party must produce each assignment of the deed of trust at the mediation. See NRS 107.086(5) (providing that each assignment of the deed of trust must be produced at the mediation); see also *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 513-14, 286 P.3d 249, 255 (2012) (explaining that FMP's document production requirement allows the court to determine, among other things, "whether the party seeking to foreclose is in fact the beneficiary of the deed of trust or a representative." (internal quotation marks omitted)).

Because Green Tree failed to bring each assignment of the deed of trust to the mediation, see *Law*, Docket No. 69469 (Order of Reversal and Remand, December 28, 2016), it necessarily failed to establish that the beneficiary or its representative appeared at the mediation. Hence, any authority conferred to Green Tree by its agreement with the prior

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<sup>2</sup>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.

<sup>3</sup>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 April 1, 2014, and were the FMRs in effect at the time the underlying mediation occurred.

beneficiary was irrelevant for purposes of the underlying mediation, and the district court abused its discretion to the extent it failed to consider whether additional sanctions beyond those imposed below were warranted based on Green Tree's violation of the FMP's participation requirement.<sup>4</sup> *See Pasillas v. HSBC Bank USA*, 127 Nev. 462, 470, 255 P.3d 1281, 1287 (2011) (recognizing the district court's discretion to impose sanctions and contemplating that the court will consider each of the foreclosing party's violations of the FMP's requirements in evaluating whether sanctions are warranted).

Aside from the foregoing, insofar as the district court sanctioned Green Tree for its failure to bring each assignment of the deed of trust to the mediation, the parties extensively dispute whether that sanctions award should have been harsher and whether it was properly structured.<sup>5</sup> With regard to most of these arguments, we discern no basis

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<sup>4</sup>Insofar as Law asserts that Green Tree violated the FMP's rules by failing to negotiate in good faith, to produce a broker's price opinion as required by FMR 12(7)(e), and to produce a copy of her note that was certified pursuant to FMR 12(8), relief is unwarranted. In particular, we affirmed the district court's finding that Law satisfied the FMP's good-faith and broker's-price-opinion requirements in Docket No. 69469, and that decision is now the law of the case. *See Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) ("The law-of-the-case doctrine provides that when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequent proceedings in that case."). And Law waived her argument regarding the note certification, as she raised it for the first time on appeal in her reply brief. *See Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (providing that issues raised for the first time in the reply brief are deemed waived).

<sup>5</sup>To the extent that Law's argument with regard to sanctions is also based on her assertion that Green Tree participated in the mediation in bad

for relief, as the district court properly exercised its discretion in crafting a sanctions award and did so based on the scope of a petition for judicial review as well as its consideration of numerous factors, including those specifically required by relevant case law.<sup>6</sup> Moreover, the district court's findings as to those factors were supported by substantial evidence insofar as it was required to make them. *See Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260 (explaining that the district court's factual findings are given deference if they are supported by substantial evidence and are not clearly erroneous); *see also Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (providing that the district court need not make express findings with regard to the *Brunzell* factors if the court's award is based on its consideration of those factors and is supported by substantial evidence).

But Law also argues that the district court's sanctions award constituted an abuse of discretion because it required her to reinstate her loan to prevent respondents from foreclosing on her home. *See Pasillas*, 127 Nev. at 470, 255 P.3d at 1287. We agree with Law. Insofar as the district court authorized respondents to foreclose without participating in another mediation if Law failed to reinstate the loan, it acted improperly.

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faith, this argument is precluded by the law-of-the-case doctrine, as noted above. *See Dictor*, 126 Nev. at 44, 223 P.3d at 334.

<sup>6</sup>*See* NRS 107.086(6) (authorizing the district court to impose sanctions against the beneficiary or its representative for failing to comply with the FMP's requirements); FMR 22(2) (setting forth the scope of a petition for judicial review); *Pasillas*, 127 Nev. at 470, 255 P.3d at 1287 (recognizing the district court's discretion to impose sanctions and setting forth a *non-exhaustive* list of factors for the court to consider in evaluating sanctions requests); *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (enumerating various factors for the district court to consider in evaluating the reasonableness of attorney fees requests).

Respondents' failure to satisfy the FMP's requirements precluded a foreclosure certificate from issuing in the underlying proceeding, *see id.* (providing that denial of a foreclosure certificate is the minimum sanction for a beneficiary's failure to comply with the FMP's requirements), and no legal authority authorized respondents to be exempted from participating in another mediation should they initiate another foreclosure proceeding.

Thus, we affirm the district court's order granting Law's petition insofar as the court sanctioned respondents for Green Tree's failure to bring each assignment to the mediation. But we reverse that order to the extent the district court (1) failed to consider whether additional sanctions beyond those it imposed were warranted based on Green Tree's failure to comply with the FMP's participation requirement and (2) authorized respondents to foreclose without participating in another foreclosure mediation. We likewise vacate the district court's October 12, 2017, order, which expressly authorized respondents to initiate a new foreclosure proceeding and foreclose without participating in another mediation.<sup>7</sup>

It is so ORDERED.



, C.J.

Silver



, J.

Tao



, J.

Gibbons

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<sup>7</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. David A. Hardy, District Judge  
Keith J. Tierney  
Wolfe & Wyman LLP  
Washoe District Court Clerk