

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICK SCHMIDT; AND LESLEY
SCHMIDT,
Appellants,
vs.
PNC BANK, N.A.,
Respondent.

No. 68621

FILED

JUN 14 2017

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

ORDER OF AFFIRMANCE

Patrick and Lesley Schmidt appeal from a district court order granting a petition for judicial review in a foreclosure mediation matter. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

The Schmidts participated in Nevada's Foreclosure Mediation Program (FMP) with respondent PNC Bank, N.A. At the mediation, PNC produced a copy of the Schmidts' note, which it certified to be a copy of the original. PNC did not provide a separate certification, however, for each of the four endorsements that were affixed to the final page of the note. As a result, the mediator found that PNC failed to comply with NRS 107.086(5) and FMR 12(7)(a),¹ which require the beneficiary to bring an original or certified copy of each assignment or endorsement of the note to the

¹As of January 13, 2016, FMR 12 was amended and renumbered as FMR 13, but the amendment is not relevant to the issue raised in this appeal.

mediation. The FMP administrator then recommended that a foreclosure certificate not issue, and PNC petitioned for judicial review.

The district court ultimately concluded that FMR 12(7)(a) did not require PNC to produce separate certifications for the note and the individual endorsements affixed thereto. And while the Schmidts opposed PNC's petition on various other grounds, the district court declined to consider their arguments, concluding that they addressed issues outside of the grounds for the mediator's decision and the scope of PNC's petition, such that they were extraneous to the petition for judicial review. Thus, the district court granted PNC's petition and directed that a foreclosure certificate issue. This appeal followed.

With regard to the narrow issue decided by the district court—whether FMR 12(7)(a) required PNC to produce separate certifications for the note and individual endorsements—on appeal, the Schmidts assert that the district court erred in resolving this issue, as FMR 12(7)(a) required PNC to produce separate certifications for the note and each of the endorsements on its final page. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 521-22, 286 P.3d 249, 260 (2012) (providing that the district court's legal conclusions are reviewed de novo). PNC disagrees. Here, PNC provided a certification indicating that it was in possession of the original note, and we conclude that this certification was sufficient to certify that the endorsements affixed to the note were originals. Indeed, requiring separate certifications for the note and the endorsements affixed to that same document would seem to be an absurd reading of the FMRs. *See Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 696, 290

P.3d 249, 254 (2012) (explaining that even where strict compliance is required, “strict compliance does not mean absurd compliance”). Thus, reversal is not warranted on this basis.²

As to the remaining appellate arguments presented by the Schmidts, although these arguments are reasserted from their opposition to the petition for judicial review filed below, the Schmidts fail to address the district court’s stated reason for refusing to consider these arguments—that they exceeded the basis for the mediator’s decision or the scope of PNC’s petition and were therefore “extraneous.” Because the Schmidts fail to challenge the district court’s determination that these additional arguments were not properly before it, we conclude they waived any challenge to the propriety of this determination.³ See *Powell v.*

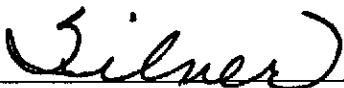
²As a result, we need not consider the Schmidts’ arguments with regard to the district court’s alternate conclusion that PNC substantially complied with FMR 12(7)(a) by producing a single certification.


³The district court’s determination that the additional arguments raised in the Schmidts’ opposition to the petition were not properly before it was erroneous because the Schmidts could, in opposing PNC’s petition, properly raise alternate bases for denying the petition, even if they were rejected, or otherwise not considered, by the mediator. See *Gubber v. Indep. Mining Co.*, 112 Nev. 190, 192, 911 P.2d 1191, 1192 (1996) (applying this rule in reviewing an appeal from a district court order granting a petition for judicial review arising from a workers’ compensation matter). But the Schmidts have not raised this argument on appeal or otherwise challenged the district court’s rationale for refusing to consider these arguments, such that this does not provide a basis for reversing the district court’s decision. 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).

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). As a result, we necessarily affirm that decision, and, therefore, we do not reach the additional appellate arguments advanced by the Schmidts. *Id.*

In light of the foregoing, we conclude the Schmidts failed to demonstrate that the district court abused its discretion in granting PNC's petition for judicial review. *See Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 480, 255 P.3d 1275, 1281 (2011) (reviewing a district court's decision with regard to a petition for judicial review in an FMP matter for an abuse of discretion). Accordingly, we affirm the district court's order granting the petition.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. David A. Hardy, District Judge
Carol Webster Millie, Settlement Judge
T M Pankopf PLLC
Ballard Spahr, LLP
Washoe District Court Clerk