IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DESIREE DEVANEY,
Appellant,
vs.
U.S. BANK, N.A.; AND QUALITY LOAN SERVICE CORPORATION,
Respondents.

No. 70776

FILED

MAY 25 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Appellant Desiree Devaney appeals from a district court order denying her petition for judicial review in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Following an unsuccessful foreclosure mediation, Devaney filed a petition for judicial review against respondents U.S. Bank, N.A., and Quality Loan Service Corporation (collectively referred to as U.S. Bank). In support of her petition, Devaney alleged, among other things, that she entered into a loan modification agreement with another bank, which is not a party to this appeal, prior to the underlying foreclosure mediation; that U.S. Bank refused to honor the agreement; and that she therefore did not actually default on her loan. The district court denied Devaney's petition, declining to address her allegations regarding the alleged loan modification agreement, and finding that U.S. Bank complied



17-901109

with the statutory requirements for obtaining a foreclosure certificate, which are set forth in NRS 107.086(5). This appeal followed.

On appeal, Devaney again argues that she did not default on her loan based on the alleged loan modification agreement, and U.S. Bank counters that that issue is outside the scope of a petition for judicial review. A district court is authorized to hold a hearing on a petition for judicial review to determine whether the beneficiary complied with the foreclosure mediation rules, to "enforc[e] agreements made between the parties within the [Foreclosure Mediation] Program," and to determine appropriate sanctions under NRS Chapter 107. FMR 23(2) (setting forth the limited purposes for which a district court may hold a hearing on a petition for judicial review); *see Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 893, 266 P.3d 602, 606 (2011) (discussing the same). But because Devaney effectively seeks to enforce an alleged loan modification agreement that was entered into prior to the underlying foreclosure mediation with a bank that was not a party to that proceeding, this matter is outside the limited scope of a petition for judicial review. *See* FMR 23(2). Thus, the district court properly declined to address this matter.

Insofar as Devaney also challenges the district court's findings with regard to U.S. Bank's compliance with the requirements set forth in NRS 107.086(5), she has not demonstrated that the court's findings were clearly erroneous. *See Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 521-22, 286 P.3d 249, 260 (2012) (explaining that the district court's factual findings are given deference if they are supported by substantial evidence and are not clearly erroneous). To the contrary, a review of the

record does not reveal any evidence to support Devaney's appellate arguments, aside from a self-serving affidavit that she attached to one of her filings in the underlying proceeding, attesting to the truth of her assertions therein.[1] *Cf. Clauson v. Lloyd*, 103 Nev. 432, 434-35, 743 P.2d 631, 633 (1987) (holding that a broad self-serving affidavit was not sufficient to support summary judgment). Moreover, the district court's findings were consistent with the statement that the mediator issued after the foreclosure mediation, indicating that U.S. Bank had satisfied each of NRS 107.086(5)'s requirements. Thus, we conclude that Devaney failed to establish that relief is warranted on this basis.

Based on the foregoing, Devaney failed to demonstrate that the district court abused its discretion by denying her 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 denial of a petition for judicial review for an abuse of discretion). Accordingly, we affirm the

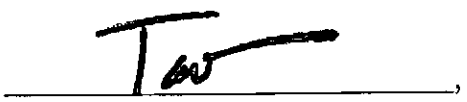
---

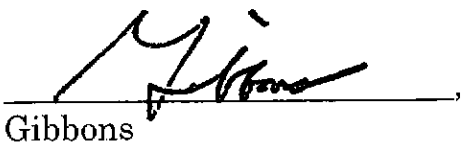
[1]To the extent Devaney may have presented testimony relevant to her arguments during the hearing before the district court on her petition for judicial review, she did not request the transcript from the hearing, and, therefore, we must presume that the missing transcript supported the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (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").

district court's decision.

It is so ORDERED.[2]


, C.J.
Silver


, J.
Tao


, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Desiree Devaney
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

---

[2]Having considered Devaney's remaining appellate arguments, we conclude that these assertions either fall outside the scope of a petition for judicial review, *see* FMR 23(2) (defining the limited scope of a petition for judicial review); have seemingly not been preserved for appellate review, *see Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."); *see also Cuzze*, 123 Nev. at 603, 172 P.3d at 135 (presuming that missing documents necessarily support the district court's decision); or otherwise do not warrant relief.