IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARL BLINCOE; AND KELLI BLINCOE,
Appellants,
vs.
CITIMORTGAGE, INC., AS SERVICER FOR BENEFICIARY BANK OF AMERICA,
Respondent.

No. 76821-COA

ORDER OF REVERSAL AND REMAND

Carl and Kelli Blincoe (the Blincoes) appeal from a final decision in a foreclosure mediation matter. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

After defaulting on their home loan, the Blincoes elected to participate in Nevada's Foreclosure Mediation Program (FMP), and respondent CitiMortgage, Inc. (Citi), appeared at the mediation on behalf of the beneficiary of the deed of trust that secured the Blincoes' loan. The mediation ultimately ended unsuccessfully, and the mediator found that Citi failed to participate in good faith. As a result, the FMP administrator recommended that a foreclosure certificate not issue.

The Blincoes petitioned for judicial review, seeking additional sanctions against Citi, which Citi opposed. Following a brief hearing, the district court concluded that Citi participated in the mediation in good faith. But because the district court further concluded that certain of Citi's

conduct prejudiced the Blincoes, it granted their petition in part, directed the parties to participate in a second mediation, and ordered Citi to pay the Blincoes' resulting attorney fees and costs.

The parties appeared for the second mediation, but agreed to continue the proceeding so that they could discuss a possible loan modification. After the Blincoes rejected Citi's subsequent modification offer, Citi moved the district court to terminate the mediation and direct the FMP administrator to issue a foreclosure certificate. To support that motion, Citi argued that the parties were at an impasse, that further mediation was futile, and that the district court had the inherent authority to terminate the mediation under FMR 1(2).[1] Over the Blincoes' opposition, the district court agreed with Citi and granted its motion. This appeal followed.

On appeal, the Blincoes contend that the district court was not authorized to terminate the second mediation. We agree. Indeed, despite the district court's conclusion to the contrary, FMR 1(2) did not provide it with inherent authority to terminate the mediation since the rule simply explains the FMRs' purpose and because a court's inherent authority does not derive from court rules. *See* FMR 1(2) (explaining that the purpose of the FMRs "is to provide for the orderly, timely, and cost-effective mediation

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[1]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, which were the FMRs in effect at the time the first mediation occurred and which therefore applied under the circumstances of this case during the second mediation.

of owner-occupied residential foreclosures"); *see also City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 362, 302 P.3d 1118, 1128 (2013) ("Inherent judicial powers stem from two sources: the separation of powers doctrine and the power inherent in a court by virtue of its sheer existence."). Moreover, district courts do not have inherent appellate jurisdiction over FMP proceedings, they only have jurisdiction to act with respect to such proceedings insofar as the Legislature has provided for them to do so. *Cf. Crane v. Cont'l Tel. Co. of Cal.*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989) (explaining that, "[w]hen the legislature creates a specific procedure for review of administrative agency decisions, [the] procedure is controlling" since courts "have no inherent appellate jurisdiction over official acts of administrative agencies"); 73A C.J.S. *Public Administrative Law & Procedure* § 423 (2014) ("Since jurisdiction is dependent on statutory provisions, the extent of jurisdiction for the review of administrative decisions is limited to that conferred by statute, and courts may lack jurisdiction under, or in the absence of, statutory provisions.").

In the context of the foreclosure mediation program, the district court's authority to review matters arising from mediations stems from NRS 107.086[2] along with the FMRs, which the Legislature authorized the supreme court to adopt to carry out the provisions of that statute. *See* NRS

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[2]NRS 107.086 was amended effective June 12, 2017, and October 1, 2019, 2017 Nev. Stat., ch. 571, § 2, at 4091-96; 2019 Nev. Stat., ch. 238, § 12, at 1359-64, but those amendments do not affect the disposition of this appeal, as they were enacted after the first mediation occurred, and, therefore, did not apply to the second mediation under the circumstances of this case.

107.086(11) (authorizing the supreme court to adopt rules governing the FMP). This statute, along with the FMRs create a procedure by which a foreclosure mediation matter proceeds before a mediator and is later subject to review by a district court if a party to the mediation files a petition for judicial review of the FMP administrator's decision concerning a foreclosure certificate or of the opposing party's compliance with any temporary modification agreements reached during the mediation. *See* NRS 107.086(6) (providing that, when a beneficiary violates the FMP's requirements, the FMP administrator must submit a recommendation concerning the imposition of sanctions, which the district court may then impose if it deems appropriate); FMR 23(1), (2) (authorizing the district court to hear petitions for judicial review of the FMP administrator's decision concerning whether a foreclosure certificate will issue or of a party's compliance with any temporary modification agreement entered into during a foreclosure mediation).

In the present case, once the district court returned the underlying proceeding to the FMP for a second mediation, any further appellate review by the district court was limited to review under the procedure set forth in NRS 107.086 and the FMRs. *Cf. Crane*, 105 Nev. at 401, 775 P.2d at 706; 73A C.J.S. *Public Administrative Law & Procedure* § 423 (2014). And nothing in NRS 107.086 or the FMRs authorized the district court to consider a motion to terminate a pending mediation, much less grant that request. Indeed, because neither party filed a petition for judicial review regarding the second mediation, presumably since the mediation did not result in a decision or agreement subject to review, the district court lacked jurisdiction to act with respect to the proceeding.

According, we reverse the order terminating the second foreclosure mediation and directing the issuance of a foreclosure certificate and remand this matter to the district court with instructions that the matter be returned to the FMP for completion of the mediation process.

It is so ORDERED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
Keith J. Tierney
Akerman LLP/Las Vegas
Washoe District Court Clerk

[3]Having reviewed the parties' remaining arguments, we conclude that they either are not properly before us or do not provide a basis for relief.