IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHERYL BRUCE,
Appellant,
vs.
MTGLQ INVESTORS, LP,
Respondent.

No. 78786-COA

FILED

JUN 12 2020

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

ORDER OF AFFIRMANCE

Cheryl Bruce appeals from a district court order granting a motion for summary judgment in a quiet title action. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

After defaulting on her home loan, Bruce brought the underlying quiet title action against the current note holder and deed of trust beneficiary for the subject property, respondent MTGLQ Investors, LP (MTGLQ). For support, Bruce alleged that MTGLQ does not have an interest in the note or deed of trust and that its predecessor in interest, JPMorgan Chase Bank, N.A. (Chase), was denied a foreclosure certificate after unsuccessfully seeking judicial review of an unsuccessful foreclosure mediation in Nevada's Foreclosure Mediation Program (FMP). MTGLQ moved for summary judgment arguing, among other things, that it is the note holder and deed of trust beneficiary and that enforcement of those instruments is not precluded by the denial of Chase's petition for judicial review of the foreclosure mediation. Bruce opposed that motion and filed a

countermotion for summary judgment. But the district court agreed with MTGLQ and granted its motion. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

On appeal, Bruce does not renew her argument concerning the preclusive effect of the denial of Chase's petition for judicial review, but instead challenges whether MTGLQ has an interest in the note and deed of trust. In particular, Bruce asserts that MTGLQ failed to correct defects in the chain of title for the note and deed of trust that led to the denial of Chase's petition for judicial review of the foreclosure mediation and the withholding of a foreclosure certificate. Initially, although Bruce bore the burden "of demonstrating superior title in . . . herself," *Res. Grp., LLC v. Nev. Ass'n Servs., Inc.*, 135 Nev. 48, 48, 437 P.3d 154, 156 (2019), she did not present any documentation below to support her case aside from a self-serving affidavit that attested to the truth of the arguments in her opposition to MTGLQ's motion for summary judgment. *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). Thus, Bruce essentially relies on the order denying Chase's petition for judicial review of the foreclosure mediation and the issue preclusion doctrine to establish defects in the chain of title for the note and deed of trust. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1052, 194 P.3d 709, 711 (2008) (explaining that "[t]he [issue preclusion] doctrine provides that any issue that was actually and necessarily litigated in one action will be estopped from being relitigated in a subsequent suit." (first alteration in original) (emphasis and internal quotation marks omitted)).

But the order denying Chase's petition for judicial review of the foreclosure mediation does not establish any specific defects in the chain of title for the note and deed of trust, as the district court's decision was based on a general finding that Chase failed to bring the documentation necessary to demonstrate the complete chain of title for those instruments from the original lender and beneficiary to Chase. By contrast, in the present case, MTGLQ produced assignments of the deed of trust, which state that the instrument was transferred, together with the note, from the original beneficiary to Chase and from Chase to MTGLQ. MTGLQ also produced an undated endorsement of the note, which complicates the picture to a degree, since it states that the instrument was transferred from the original lender to MTGLQ—a transfer that would be impossible if the original beneficiary had already transferred the note to Chase. *See* 6A C.J.S. *Assignments* § 111 (2020) ("An assignee stands in the shoes of the assignor and ordinarily

obtains only the rights possessed by the assignor at the time of the assignment, and no more.").

But although a question therefore exists as to whether MTGLQ acquired the note by way of the deed of trust assignments or the note endorsement, since both the assignments and the endorsement indicate that the note was ultimately transferred to MTGLQ, we conclude that MTGLQ presented sufficient documentation to satisfy its burden of showing an absence of any genuine issue of material fact on the question of whether it possessed an interest in the note and deed of trust.[1] *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (discussing burdens of production in the summary judgment context). And because Bruce did not present any evidence, much less contrary evidence,

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[1]Bruce challenges MTGLQ's documentation on the grounds that MTGLQ failed to produce original or certified copies. But although NRS 107.086 requires beneficiaries to produce certified copies of loan documents in FMP proceedings, that requirement does not extend to judicial actions to quiet title. Bruce's argument that the note endorsement is ineffective since it is undated is also unavailing since there is no legal requirement that an endorsement on a promissory note be dated. *See* NRS 104.3204 (discussing the endorsement of a promissory note and not providing any requirement that the endorsement be dated); U.C.C. § 3-204 (Am. Law Inst. & Unif. Law Comm'n 2017) (doing the same). And to the extent that Bruce argues that MTGLQ may not have had authority to execute the latter deed of trust assignment on Chase's behalf, she waived that argument by failing to raise it below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, ___, 623 P.2d 981, ___ (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

to satisfy her resulting burden of production, *see id.*, we conclude that the district court did not err by granting summary judgment in MTGLQ's favor. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Scott N. Freeman, District Judge
Cheryl Bruce
Wright, Finlay & Zak, LLP/Las Vegas
Washoe District Court Clerk

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[2]With respect to the answer to respondent's response to appellant's motion for restraining order and preliminary injunction that Bruce filed on June 4, 2020, we note that this court denied Bruce's underlying motion for restraining order and preliminary injunction on May 28, 2020. To the extent Bruce seeks reconsideration of the May 28 order by way of her June 4 filing, the matter is rendered moot by our disposition of this appeal.