IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARTIN CENTENO; AND RICARDO FOJAS,
Appellants,
vs.
B. QUEEN VICTORIA, LLC; ABSOLUTE COLLECTION SERVICES, INC.; AND BANK OF AMERICA, N.A.,
Respondents.

No. 78279-COA

FILED

JUN 12 2020

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

ORDER OF AFFIRMANCE

Martin Centeno and Ricardo Fojas appeal from a district court order granting motions for summary judgment in a real property matter. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

The original owners of the subject property failed to make periodic payments to their homeowners' association (HOA). The HOA recorded a notice of delinquent assessment lien and later a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Appellants' predecessor purchased the property at the resulting foreclosure sale, but when it too failed to pay monthly assessments, the HOA again mailed and recorded the requisite notices and proceeded to foreclose on the property for a second time. Respondent B. Queen Victoria, LLC (BQV), purchased the property at the second foreclosure sale, and Centeno filed the underlying action against BQV and the HOA foreclosure agent—respondent Absolute Collection Services, Inc. (Absolute)—seeking damages for wrongful foreclosure and cancellation of the foreclosure deed issued to BQV on grounds that Absolute failed to provide statutorily compliant notice of the sale. BQV counterclaimed seeking to quiet title to the property, and it also filed claims

against respondent Bank of America, N.A. (BOA)—holder of the first deed of trust on the property—and appellants' predecessor (in place of which Fojas later substituted) seeking the same.

Ultimately, the parties filed competing motions for summary judgment, and the district court concluded that the second foreclosure sale was valid and that appellants therefore lost their interests in the property. It also concluded that BQV took the property subject to BOA's deed of trust because the Federal Home Loan Mortgage Corporation (Freddie Mac) owned the underlying loan at the time of both of the foreclosure sales such that 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) preserved BOA's interest (a determination we affirm in Docket No. 78139-COA). 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, appellants contend that the second foreclosure sale was void—and that they therefore continue to own the property—because the HOA and its foreclosure agent did not comply with all of the relevant statutory notice requirements under NRS Chapter 116. But even assuming that notice was not provided in accordance with the relevant statutes, appellants did not allege or provide any evidence below demonstrating that

they were in any way prejudiced by a lack of notice. *See U.S. Bank, Nat'l Ass'n ND v. Res. Grp., LLC*, 135 Nev. 199, 203-04, 444 P.3d 442, 447 (2019) (recognizing that statutorily deficient notice results in a void sale only when the evidence shows that the property owner did not otherwise receive notice of the sale and was prejudiced as a result).

To defeat summary judgment in favor of BQV, appellants bore the burden to produce admissible evidence—by affidavit or otherwise—demonstrating that they did not otherwise receive notice of the sale and that they were prejudiced by the lack of notice. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (discussing the burdens of production that arise in the context of a motion for summary judgment and noting that a party opposing summary judgment "must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact"). But the only evidence appellants presented below were affidavits attesting to the fact that they did not receive statutorily compliant notice, as well as copies of the mailed notices produced by Absolute that reflect that they were returned to sender. Appellants did not attest to the fact that they received no pre-sale notice at all, nor did they produce any evidence showing that they would have acted to cure their default had they received notice. *Cf. Res. Grp.*, 135 Nev. at 204, 444 P.3d at 447 (concluding that a bank representative's testimony that the bank did not receive actual notice of the foreclosure sale—and that it would have cured the borrower's default if it did—would, if credited, demonstrate "the lack of notice and prejudice needed to void the sale"). Thus, appellants failed to demonstrate a genuine dispute of material fact as to the validity of the second foreclosure sale. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Appellants also contend that the district court's ruling regarding the Federal Foreclosure Bar and the preservation of BOA's deed of trust has no effect with respect to their interests in the property because BOA never asserted any claim for relief against them in the underlying action. But even if appellants would be correct on this point, they lost their interests in the property when the HOA sold it to BQV. Accordingly, the district court's ruling with respect to BOA's deed of trust is of no consequence to appellants and does not provide a basis for reversal.[1]

Based on the foregoing, we

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

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

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[1]To the extent appellants contend that BOA's interest was extinguished by the first foreclosure sale, they did not assert any claim for relief against BOA below; the only claims asserted were Centeno's claims against BQV and Absolute. Moreover, appellants do not set forth any argument in their informal brief as to why the Federal Foreclosure Bar would not have preserved BOA's interest at the time of the first foreclosure sale, and the issue is therefore waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

[2]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Kenneth C. Cory, District Judge
Martin Centeno
Ricardo Fojas
Akerman LLP/Las Vegas
The Wright Law Group
Cox Law, LLC
Eighth District Court Clerk