

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS CONNERS,
Appellant,
vs.
CAPITAL ONE, N.A., BENEFICIARY,
Respondent.

No. 77555-COA

FILED

JUL 24 2020

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

ORDER OF AFFIRMANCE

Thomas Connors appeals from a district court order dismissing a petition for judicial review in a foreclosure mediation matter. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

After defaulting on his home loan, Connors elected to participate in Nevada's Foreclosure Mediation Program (FMP). Following an unsuccessful first mediation with respondent Capital One, N.A.—beneficiary of the first deed of trust on the subject property—Connors filed a petition for judicial review in the district court, which granted the petition and ordered a second mediation. After that mediation also ended without the parties reaching an agreement on a loan modification, Connors—after obtaining leave to do so—filed a renewed petition for judicial review in the same district court case in which he filed his first petition.¹ The district

¹The district court noted that Connors should have filed a new petition with respect to the second mediation, but it allowed Connors to proceed with the renewed petition because Capital One failed to oppose his request for leave to file it.

court set the matter for an evidentiary hearing, but Capital One filed a prehearing motion to dismiss Connors' renewed petition for lack of standing. Specifically, Capital One argued that, prior to initiation of the underlying foreclosure and attendant FMP proceedings, Connors had conveyed the subject property to his then-wife, Kelly, as her sole and separate property, and she continued to own the property at the time of the proceedings below. Accordingly, Capital One contended that Connors did not own the property and that the property was therefore not "owner-occupied" as required for participation in the FMP. The district court agreed, and it dismissed Connors' renewed petition for lack of standing. This appeal followed.

Although we defer to a district court's factual findings made in the context of a petition for judicial review in an FMP matter, we review its legal determinations—such as its construction of a statute or FMP rule—de novo. *Pascua v. Bayview Loan Servicing, LLC*, 135 Nev. 29, 31-32, 434 P.3d 287, 289 (2019) (reviewing de novo the question of whether the appellant was eligible to participate in the FMP under the governing statute and rules); cf. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) ("Standing is a question of law reviewed de novo."). Pursuant to the governing statute and the Foreclosure Mediation Rules (FMRs),² the

²Because of the protracted nature of the underlying foreclosure and FMP proceedings, it is not immediately clear which versions of the governing statute and the FMRs—which have been amended numerous times—apply to this appeal. Compare *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 473 & n.2, 255 P.3d 1275, 1277 & n.2 (2011) (applying

FMP applies to housing that is “owner-occupied.” NRS 107.086(1); FMR 1(1)-(2), 7(1)-(2); *Pascua*, 135 Nev. at 32, 434 P.3d at 289. “Owner-occupied housing” is defined as “housing that is occupied by an owner as the owner’s primary residence.” NRS 107.086(15)(e); *see* FMR 7(2).

On appeal, Conners contends that he was the owner of the subject property at all relevant times such that the district court should not have dismissed his renewed petition. However, Conners does not meaningfully dispute that he had conveyed the property to Kelly prior to Capital One’s initiation of the underlying foreclosure proceedings and that she remained the owner of record until she conveyed the property back to him after Capital One filed its motion to dismiss. He vaguely alleges that he had “temporarily transferred an interest” in the property to Kelly and that, before Capital One initiated foreclosure, the interest was transferred back to him in the couple’s divorce. But Conners fails to explain how the deed to Kelly—which expressly transferred ownership of the property from Conners to her with no qualifications—in any way constituted the transfer

the law in effect at the time of the relevant mediation), *and Pasillas v. HSBC Bank USA*, 127 Nev. 462, 464 & n.3, 255 P.3d 1281, 1283 & n.3 (2011) (same), *with Pascua*, 135 Nev. at 32 n.3, 434 P.3d at 289 n.3 (applying the law in effect as of the date “[t]he foreclosure proceedings were commenced”). Regardless, because the amendments do not affect our analysis, we simply cite the versions of the governing statute and the FMRs in effect at the time of the mediation giving rise to the underlying petition for judicial review. *See* 2015 Nev. Stat., ch. 266, § 8, at 1345-48; *In re Adoption of Rules for Foreclosure Mediation*, ADKT 0435 (Order Amending Foreclosure Mediation Rules, December 14, 2015).

of something less than a full ownership interest. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument or relevant authority). Nor does Connors explain how the settlement reflected in the divorce decree rendered him the owner of the property for purposes of the FMP when it merely provided that Kelly would, at some point in the future, execute a quitclaim deed relinquishing the property to Connors.³ *See id.*

Connors also contends that Capital One, the FMP, and the district court all previously recognized him as the owner of the property in the underlying proceedings and thereby “ratified” his ownership. But he does not provide any cogent argument or relevant authority in support of the notion that a mistaken belief as to his ownership of the property on the

³Although the divorce decree might arguably have vested equitable title to the property in Connors, *see Title, Black's Law Dictionary* (11th ed. 2019) (defining “equitable title” as “[a] title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title,” and “legal title” as “[a] title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest”), he fails to argue that point or explain how such title would amount to ownership as contemplated under NRS 107.086 and the FMRs, and we therefore need not reach that issue. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. And regardless, as pointed out by Capital One, Connors failed to provide a complete copy of the divorce decree both below and on appeal, and it is therefore impossible for this court to discern from the record provided the true legal effect of the decree. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (“When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision.”).


part of the deed of trust beneficiary, the FMP, or the district court somehow rendered him the true owner, especially in light of the recorded deed vesting ownership of the property in Kelly outright. *See id.*; *see also* NRS 111.315 (providing that every conveyance of real property shall be recorded, “but shall be valid and binding between the parties thereto [even] without such record”); NRS 111.320 (providing that recorded conveyances “impart notice to all persons of the contents thereof”). Consequently, we are not persuaded by Conners’ argument that he was the owner of the property at the time he elected to participate in the FMP, and we therefore agree with the district court that Conners was not eligible to participate in the program at that time. *See* NRS 107.086(1), (15)(e); FMR 1(1)-(2), 7(1)-(2); *Pascua*, 135 Nev. at 32, 434 P.3d at 289.

Conners further fails to demonstrate that the district court erred in determining that, because he was not eligible to participate in the FMP at the time of the underlying mediation, he was likewise not eligible to file the underlying petition for judicial review. The right to file such a petition is provided by the FMRs, *see* FMR 23(2), and Conners provides no argument as to how those rules could afford him any procedural rights when he was not even eligible to participate in the FMP in the first place. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Nor does he provide this court any reason to conclude that Kelly’s conveyance of the property back to him nearly two years after the subject mediation retroactively afforded him the right to seek judicial review. *See id.* Thus, we discern no error in the district court’s decision to dismiss Conners’ petition for lack of standing, *see Heller v. Nev. State Leg.*, 120 Nev. 456, 460, 93 P.3d 746, 749

(2004) (“Standing is the legal right to set judicial machinery in motion.”
(internal quotation marks omitted)), and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Elliott A. Sattler, District Judge
Keith J. Tierney
Greenberg Traurig, LLP/Las Vegas
Washoe District Court Clerk

⁴In light of our disposition, we need not consider Connors’ remaining arguments. Moreover, to the extent Connors alludes to the possibility that, if he was not the true owner of the property after the conveyance to Kelly, the notice of default Capital One served him with may have been deficient, we take no position on that point.