

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSBALDO ARCEO,

Appellant,

vs.

FIRST AMERICAN TITLE INSURANCE
COMPANY; FIRST AMERICAN
TRUSTEE SERVICING SOLUTIONS,
LLC; AND U.S. BANK TRUST, N.A., AS
TRUSTEE FOR LSRMF MH MASTER
PARTICIPATION TRUST II,
Respondents.¹

No. 82073-COA

FILED

JAN 07 2022

ELIZABETH A. BRONSON
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Osbaldo Arceo appeals from a district court order denying a request for relief in a foreclosure mediation matter. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Arceo acquired the subject property at a homeowners' association (HOA) foreclosure sale in 2013. Subsequently, the predecessor to respondent U.S. Bank Trust, N.A.—the current beneficiary of the first deed of trust on the property—initiated an action for quiet title and declaratory relief against Arceo in federal district court, which resulted in the entry of a default judgment against Arceo confirming that the deed of trust was not extinguished by the HOA foreclosure sale. Thereafter, respondent First American Trustee Servicing Solutions, LLC, acting as the trustee under the deed of trust, initiated nonjudicial foreclosure

¹We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

proceedings, and Arceo filed the underlying petition for foreclosure mediation assistance in pro se.

Arceo failed to appear in person at the ensuing mediation; instead, Arceo's 18-year-old daughter, Dianna, appeared on his behalf. During the mediation, at the request of respondents' counsel and following telephonic communications, Arceo emailed a copy of a limited power of attorney purporting to grant Dianna authority to act on his behalf at the mediation. The document was electronically signed by Arceo and notarized by a Virginia notary public. Respondents' counsel insisted that Dianna produce the original document, but she did not have any such document in her possession. In the mediator's statement filed in the district court after the mediation concluded, the mediator noted that the emailed copy of the power of attorney "did not appear to have Mr. Arceo's signature, but rather a typed name on the signature line," and that "[m]ediation was terminated because [Dianna] did not have an original Power of Attorney containing Mr. Arceo's original signature and the original signature of a Notary Public." Accordingly, the mediator recommended dismissal of Arceo's petition for foreclosure mediation assistance.

Arceo then filed a request for relief in the district court, arguing in part that Dianna was authorized to appear at the mediation on his behalf and that the mediator improperly concluded otherwise and terminated the mediation. Respondents opposed the request, and the district court entered a written order denying it. The court concluded that Arceo violated FMR 12² by failing to attend the mediation personally or through an eligible

²The FMRs were originally adopted on June 30, 2009, and have been amended and renumbered numerous times since. For clarity, we apply the *continued on next page...*

representative, as the copy of the power of attorney Arceo emailed “was not signed by [him]” as required under NRS 162A.220(1). The court further concluded that Dianna was “unfit” to participate in the mediation under FMR 12(b) and (d). On those grounds, the court dismissed Arceo’s petition for foreclosure mediation assistance and directed the issuance of a foreclosure certificate. Arceo then retained counsel and filed a motion to alter or amend the order, which the court denied, and this appeal followed.

We give deference to the district court’s factual determinations in a foreclosure mediation matter, but we review legal issues de novo. *Pascua v. Bayview Loan Servicing, LLC*, 135 Nev. 29, 31, 434 P.3d 287, 289 (2019). On appeal, Arceo argues that the mediator and the district court erred in determining that Dianna was not qualified to represent Arceo at the mediation. Because we agree with Arceo on this point, we need not address any of his other arguments on appeal, and we reverse the district court’s order and remand for further proceedings.

The Foreclosure Mediation Rules provide that a representative may appear on behalf of a borrower at the mediation, but the representative generally must be either (1) an attorney licensed in Nevada, (2) a person licensed to provide services as described in NRS 645F.310, or (3) a HUD-approved housing counselor. FMR 12(b)(1)-(3). However, a borrower “may give power of attorney to someone else to represent them in mediation,” and that person must satisfy the general requirements set forth in FMR 12(b) only if they are compensated for the representation. FMR 12(d).

Concerning powers of attorney, such a document “must be signed by the principal or, in the principal’s conscious presence, by another

FMRs that went into effect on August 31, 2017, which governed the proceedings at the time of the underlying mediation.

individual directed by the principal to sign the principal's name on the power of attorney." NRS 162A.220(1). A signature on a power of attorney is presumed to be authentic if the principal acknowledges it before a notary public. *Id.* NRS Chapter 162A, which governs powers of attorney, defines "sign" as "[t]o execute or adopt a tangible symbol" or "[t]o attach to or logically associate with [a] record an electronic sound, symbol or process" with the "present intent to authenticate or adopt [the] record." NRS 162A.140(1)-(2); *see also* NRS 719.240 (providing that "[a] signature may not be denied legal effect or enforceability solely because it is in electronic form"). Generally, "a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original." NRS 162A.230(4).


Here, the district court summarily determined that Arceo's typewritten name on the emailed power of attorney did not constitute a signature sufficient to authenticate the document under NRS 162A.220(1). But as noted above, the law is clear that an electronic signature generally has the same legal effect as a wet-ink signature, *see* NRS 162A.140(1)-(2); NRS 719.240, and neither the mediator, the district court, nor respondents on appeal have identified any requirement for a wet-ink signature under circumstances like those at issue here. Moreover, respondents fail to set forth any argument as to why Arceo's electronic signature should not have been presumed valid in light of the acknowledgement before a notary public. *See* NRS 162A.220(1). Accordingly, under these circumstances, the district court erred in determining that the emailed power of attorney lacked a valid signature.

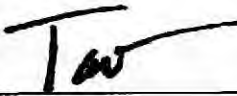
To the extent the district court alternatively determined that Dianna was not fit to participate in the mediation because she failed to

satisfy the requirements set forth in FMR 12(b)(1)-(3), Arceo has consistently represented that Dianna was not being compensated for her appearance, and respondents have never disputed that point. Dianna was therefore not required to comply with those requirements, *see* FMR 12(d), and the district court erred in concluding otherwise.

In light of the foregoing, we reverse the district court's order denying Arceo's request for relief and dismissing his petition for foreclosure mediation assistance, and we remand this matter for further proceedings.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Hon. Kathleen A. Sigurdson, District Judge
Benjamin B. Childs
Wright, Finlay & Zak, LLP/Las Vegas
Washoe District Court Clerk