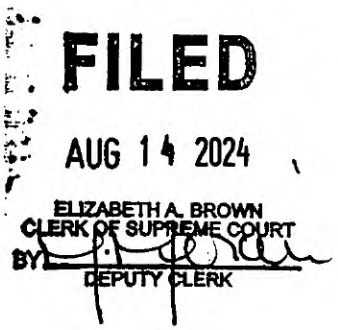
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICARDO P. PASCUA, SURVIVING SPOUSE OF MYRNA PASCUA,
Appellant,
vs.
PRESTIGE DEFAULT; AND BANK OF NEW YORK MELLON F/K/A BANK OF NEW YORK,
Respondents.

No. 85382-COA



ORDER OF AFFIRMANCE

Ricardo P. Pascua appeals from a district court order directing the issuance of a foreclosure certificate and dismissing a petition for foreclosure mediation assistance. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Chief Judge.

After Pascua defaulted on his home loan, nonjudicial foreclosure proceedings were initiated against the subject property, and Pascua elected to participate in Nevada's Foreclosure Mediation Program. Respondents Prestige Default and Bank of New York Mellon F/K/A Bank of New York—respectively the trustee and beneficiary of the first deed of trust on the property—appeared at the mediation via counsel. However, the parties did not come to an agreement on a loan modification at the mediation, and the mediator later filed a mediator's statement in district court, recommending that the court direct the issuance of a foreclosure certificate and dismiss Pascua's petition for foreclosure mediation assistance. Pascua did not subsequently challenge the mediator's statement by filing a request for appropriate relief in the district court,

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which he was authorized to do under FMR 20(2) within 10 days after submission of the mediator's statement. Thus, after the 10-day period elapsed, the district court entered an order directing the issuance of a foreclosure certificate and dismissing Pascua's petition for foreclosure mediation assistance, finding that no timely objection was filed to the mediator's statement. This appeal followed.

On appeal, Pascua challenges the district court's decision based on FMR 20(3), which provides that *"[u]pon receipt of the mediator's statement and any request for relief*, the [d]istrict [c]ourt shall enter an order (1) describing the terms of any loan modification or settlement agreement, (2) dismissing the petition, or (3) detailing decisions regarding the imposition of sanctions as the [d]istrict [c]ourt determines is appropriate." (Emphasis added.) Based on the emphasized language, Pascua maintains that the district court could not properly direct the issuance of a foreclosure certificate and dismiss his petition for foreclosure mediation assistance until both the mediator's statement and a request for appropriate relief from at least one of the parties were filed in district court.[1]

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[1]Pascua also argues that FMR 20(3) is unconstitutional for various reasons. However, Pascua did not raise those arguments before the district court. Although the general rule is that an issue not raised before the district court is "deemed to have been waived and will not be considered on appeal," this rule may be relaxed for review of constitutional issues. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); *see also Desert Chrysler-Plymouth, Inc. v. Chrysler Corp.*, 95 Nev. 640, 643, 600 P.2d 1189, 1190-91 (1979) (stating that relaxation of the general rule is occasionally appropriate). But here, Pascua not only failed to raise these issues below, he waited until his reply brief on appeal to address the constitutionality of FMR 20(3). Under these circumstances, we decline to exercise our discretion to consider Pascua's constitutional arguments. *See Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193,

In an FMP matter, we review legal issues de novo, including the district court's interpretation of statutes or rules. *Pascua v. Bayview Loan Servicing, LLC*, 135 Nev. 29, 31, 434 P.3d 287, 289 (2019). "If the plain meaning of a statute is clear on its face, then this court will not go beyond the language of the statute to determine its meaning." *Id.* (brackets and internal quotation marks omitted). Whenever possible, this court will interpret a subsection of a statute or rule in harmony with the statute or rule as a whole. *Branch Banking & Tr. Co. v. Windhaven & Tollway, LLC*, 131 Nev. 155, 158, 347 P.3d 1038, 1040 (2015). To the extent possible, we endeavor to interpret a statute or rule in a manner that avoids unreasonable or absurd results. *Platte River Ins. Co. v. Jackson*, 137 Nev. 773, 778, 500 P.3d 1257, 1262 (2021).

Here, the flaw in Pascua's argument is that he reads FMR 20(3) in isolation, relying on its use of "and," which is generally conjunctive, *see State Dep't of Emp't Training & Rehab., Emp't Sec. Div. v. Reliable Health Care Servs. of S. Nev., Inc.*, 115 Nev. 253, 257-58, 983 P.2d 414, 417 (1999) (determining that a statute with three statutory requisites joined by an "and" was "conjunctive in nature" and required all three criteria to be proven), to argue that the mediator's statement and a request for

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198-99 (2005) (providing that Nevada's appellate courts need not consider issues raised for the first time in a reply brief); *Iliescu v. Reg'l Transp. Comm'n*, No. 81753-COA, 2021 WL 4933429, at *4 n.4 (Nev. Ct. App. Oct. 21, 2021) (Order of Affirmance) (declining to consider constitutional arguments raised for the first time in a reply brief); *Smith v. State*, No. 81136, 2021 WL 4238042, at *1 n.3 (Nev. Sep. 16, 2021) (Order of Affirmance) (doing the same); *see also Wells Fargo Bank v. Renslow*, No. 58283, 2015 WL 3368883, at *2 (Nev. May 21, 2015) (Order Affirming in Part and Reversing in Part) (declining to entertain constitutional arguments in an FMP proceeding that were not raised before the district court).

appropriate relief had to be filed in the district court before the district court could enter final judgment. However, subsection (3) of FMR 20 must be read together with the rule as a whole in a manner that avoids unreasonable and absurd results. *See Branch Banking & Tr. Co.*, 131 Nev. at 158, 347 P.3d at 1040; *see also Platte River Ins. Co.*, 137 Nev. at 778, 500 P.3d at 1262.

Importantly, subsection (2) of FMR 20 provides that, "[f]ollowing submission of the mediator's statement, within 10 days, either party *may* submit a request for appropriate relief." (Emphasis added.) Insofar as FMR 20(2) uses the word "may," it permits, but does not require, the parties to an FMP proceeding to file a request for appropriate relief after a mediation statement is filed in district court. *See Ewing v. Fahey*, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970) (providing that a statute's use of the word "may" is generally permissive). Moreover, FMR 20(2) unambiguously establishes a 10-day period for filing a request for appropriate relief if a party elects to file one.

Given these principles, we cannot conclude that the meaning of the phrase "[u]pon receipt of the mediator's statement and any request for relief" in subsection (3) of FMR 20 is that the district court cannot enter the final judgment in a foreclosure mediation action until the mediator's statement and at least one request for appropriate relief are filed. To the contrary, because the rule uses the word "any" in connection with the phrase "request for relief" it recognizes that the filing of a request for appropriate relief is permissive under FMR 20(2), such that there might not be "any" request for appropriate relief within the meaning of the rule.

Thus, reading FMR 20(3) together with FMR 20(2), we conclude that, upon receipt of the mediator's statement and any timely filed request

for appropriate relief, the district court must resolve the request for relief and enter a final judgment in the case. However, because the parties are not required to file a request for appropriate relief, reading FMR 20(2) and (3) together plainly requires that, when no request for appropriate relief is filed within 10 days of the filing of the mediator's statement with the district court, the court must enter a final judgment resolving the petition. To construe FMR 20(2) and (3) otherwise would lead to unreasonable and absurd results, as the district court would be required to leave an FMP matter pending on its docket indefinitely when the parties elect not to file a request for appropriate relief. *See Platte River Ins. Co.*, 137 Nev. at 778, 500 P.3d at 1262. Thus, because neither Pascua nor respondents availed themselves of the opportunity to file a request for appropriate relief within the 10-day period, the district court could properly direct the issuance of a foreclosure certificate and dismiss Pascua's petition for foreclosure mediation assistance, as the mediator recommended. *See* FMR 20(2), (3); *see also Pascua*, 135 Nev. at 31, 434 P.3d at 289.

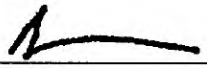
Although Pascua further argues that respondents should have been sanctioned for noncompliance with the FMP's requirements, *see Jacinto v. PennyMac Corp.*, 129 Nev. 300, 304, 300 P.3d 724, 727 (2013) (explaining that the bare minimum sanction for noncompliance with the FMP's requirements is that a foreclosure certificate must not issue), Pascua did not raise his arguments on this point before the district court and he therefore waived them. *See Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983. Moreover, by foregoing the district court's judicial review of the mediation and raising his arguments concerning respondents' compliance with the FMP's requirements on appeal for the first time outside of the mediation context, Pascua is essentially asking this court to resolve factual

disputes in the first instance on appeal, which we decline to do. *See Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) ("[A]n appellate court is not an appropriate forum in which to resolve disputed questions of fact.").

Thus, because Pascua has failed to establish that the district court improperly directed the issuance of a foreclosure certificate and dismissed his petition for foreclosure mediation assistance, we

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

_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Jerry A. Wiese, Chief Judge
Ricardo P. Pascua
Tiffany & Bosco, P.A./Las Vegas
Ghidotti Berger LLP/Las Vegas
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

[2]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered them and conclude that they do not present a basis for relief.