

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH WICKER; AND ROBYN
WICKER,
Appellants,
vs.
TRINITY FINANCIAL SERVICES, LLC,
A LIMITED LIABILITY COMPANY;
AND QUALITY LOAN SERVICE
CORPORATION,
Respondents.

No. 87138-COA

FILED

SEP 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kenneth Wicker and Robyn Wicker appeal 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 the Wickers defaulted on their home loan, they filed a “Petition for Judicial Review – Mediation Assistance”—essentially a petition for foreclosure mediation assistance under FMR 8—requesting to participate in Nevada’s Foreclosure Mediation Program (FMP). Respondents Trinity Financial Services, LLC and Quality Loan Service Corporation—respectively the beneficiary and trustee 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 the Wickers’ petition for foreclosure mediation assistance.

The Wickers then filed a “Petition for Judicial Review Re Mediation”—essentially a request for appropriate relief under FMR 20(2)—arguing that respondents did not participate in the mediation in good faith and that their representative who appeared at the mediation lacked authority to negotiate on their behalf. On those grounds, the Wickers maintained that a foreclosure certificate should not issue and that they were entitled to attorney fees and costs. Respondents disagreed with these points in their response and, following a hearing, the district court entered an order denying the Wickers’ request for appropriate relief and directing the issuance of a foreclosure certificate, finding that they failed to produce sufficient evidence to overcome the mediator’s findings that respondents complied with the FMP’s requirements. This appeal followed.

To obtain the foreclosure mediation certificate that is generally needed to foreclose on owner-occupied housing, the beneficiary of the deed of trust must: (1) attend the mediation; (2) participate in good faith; (3) bring the required documents; and (4) if attending through a third party representative, have a person present with authority to modify the loan or have access to such a person. NRS 107.086(1), (2)(e), (5), (6);¹ *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 513, 286 P.3d 249, 255 (2012). In an FMP matter, we defer to the district court’s factual findings and review its decision regarding the imposition of sanctions for an abuse of discretion, but we review its legal conclusions de novo. *Jacinto v. PennyMac Corp.*, 129

¹Although NRS 107.086 was amended effective July 1, 2023, 2023 Nev. Stat., ch. 118, § 12, at 613-17, we apply the version of that statute that went into effect on October 1, 2019, since it was the version in effect at the time of the underlying mediation.

Nev. 300, 304, 300 P.3d 724, 727 (2013); *Pasillas v. HSBC Bank USA*, 127 Nev. 462, 467, 255 P.3d 1281, 1285 (2011).

On appeal, appellant essentially contends that the district court could not properly rely on the mediator's statement in evaluating whether respondents complied with the FMP's requirements because the only finding that the mediator purportedly made in the mediator's statement was that the parties were unable to agree to a loan modification. However, because the mediator did not check any boxes on the mediator's statement indicating that respondents failed to comply with the FMP's requirements and recommended the issuance of a foreclosure certificate, the mediator implicitly found that respondents complied with the FMP's requirements. *See Coppola v. Wells Fargo Bank, N.A.*, No. 81007, 2022 WL 4542463, at *3 (Nev. Sept. 28, 2022) (Order of Affirmance) (treating the mediator's decision not to check boxes on the mediator's statement indicating the beneficiary's noncompliance with the FMP's requirements as implicit findings of compliance). A mediator's statement is admissible "without the necessity of any additional foundation or testimony of the [m]ediator" in district court proceedings arising from the FMP. EDCR 2.14(k).² Thus, the district court could properly consider the mediator's statement in evaluating whether respondents complied with the FMP's requirements. *See Coppola*, No. 81007, 2022 WL 4542463, at *3 (concluding that the district court correctly found a homeowner's arguments concerning the beneficiary's failure to

²Although EDCR 2.14(k) was amended and renumbered April 26, 2024, effective June 25, 2024, *In re Proposed Amends. to the Rules of Prac. for the Eighth Jud. Dist. Ct.*, Adkt. 0612 (Apr. 26, 2024) (Order Amending the Rules of Practice for the Eighth Judicial District Court), we cite to the pre-amendment version of the rule, which was the version in effect when the Wickers filed their request for appropriate relief.

produce required documents to be unsupported by the record or unpersuasive since the mediator did not check the boxes on the mediator's statement indicating that required documents were missing).

The Wickers next contend that the district court should have found that respondents participated in the mediation in bad faith because they failed to comply with FMR 13(10), which provides that the beneficiary must "prepare an estimate of the 'short sale' value of the residence that it may be willing to consider as a part of the negotiation if loan modification is not agreed upon, and shall submit any conditions that must be met in order for a short sale to be approved." In particular, the Wickers assert that, although respondents produced a short sale estimate prior to the mediation, it described a sale that did not qualify as a short sale. The Nevada Supreme Court has recognized that courts typically define a short sale as "a real estate transaction in which the property serving as collateral for a mortgage is sold for *less than the outstanding balance on the secured loan*, and the mortgage lender agrees to discount the loan balance because of a consumer's economic distress." *Coppola*, No. 81007, 2022 WL 4542463, at *2 (quoting *Shaw v. Experian Info. Sols., Inc.*, 891 F.3d 749, 752 (9th Cir. 2018)). Here, while the Wickers seek to demonstrate that respondents' estimate of the short sale value of their property exceeded the total amount they owed on the two mortgages encumbering the property,³ they only

³The Wickers also contend that the short sale estimate was defective because the proposed sale price exceeded the value of their property, as established in a broker's price opinion produced by respondents. However, the Wickers fail to direct our attention to any caselaw or legal authority that defines a short sale based on the value of the property, rather than the amount owed on the mortgages encumbering it. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)

produced documentation before the district court concerning the amount they owed on one of their mortgages. Consequently, the Wickers failed to demonstrate that respondents' short sale estimate was defective because the proposed sale price exceeded the total amount the Wickers owed on their mortgages, and relief is therefore unwarranted in this respect.⁴

The Wickers further argue that the district court should have found respondents participated in the mediation in bad faith because they offered loan modification options that the Wickers could not afford and were unwilling to modify the terms of those options or the short sale estimate discussed above. However, nothing in NRS 107.086 or the FMRs requires the beneficiary to offer any particular loan modification or short sale option. See NRS 107.086(6) (describing the circumstances in which the mediator is required to recommend the imposition of sanctions against the beneficiary without listing the failure to offer a loan modification or short sale option as one of the circumstances); FMR 1(2) (providing that the FMP is intended

(holding that the appellate courts need not consider arguments unsupported by citations to relevant legal authority); see also *Coppola*, No. 81007, 2022 WL 45 42463, at *2 (rejecting a substantially similar argument for the same reason).

⁴The Wickers also argue that respondents violated FMR 13(10) because they were unwilling to discuss certain terms of the short sale. However, the Wickers' argument is unpersuasive given that the mediator found respondents participated in the mediation in good faith. *Coppola*, No. 81007, 2022 WL 4542463, at *3 (concluding that a homeowner's argument concerning the beneficiary's failure to comply with an FMP requirement was unsupported by the record and unpersuasive based on the mediator's finding to contrary).

to encourage lenders and homeowners “to exchange information and proposals that *may avoid foreclosure*” without any specific requirement that a modification or short sale be offered at every mediation (emphasis added); FMR 13(10) (requiring the beneficiary to provide a short sale estimate it *may* be willing to consider if the parties do not reach an agreement concerning a loan modification). Thus, relief is unwarranted on this basis.

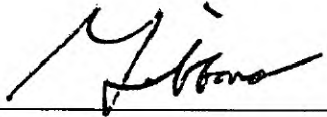
The Wickers also contend that respondents’ representative at the mediation lacked authority to negotiate a loan modification or short sale on their behalf. Under FMR 13(7)(d), if the beneficiary appears at the mediation through a representative, the representative must “produce a copy of the agreement, or relevant portion thereof, which authorizes the third party to represent the beneficiary at the mediation and authorizes the third party to negotiate a loan modification on behalf of the beneficiary.” Here, the mediator found that respondents’ representative demonstrated his authority to negotiate on respondents’ behalf at the mediation. But the Wickers have never made any attempt to address what, if any, documents the representative presented at the mediation to establish his authority in accordance with FMR 13(7)(d).⁵ See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”). Instead, the Wickers maintain that the representative “seemed not to have authority to mediate and negotiate” because he would not entertain alternatives to the loan modification and short sale options that

⁵Nor did the Wickers produce any such documents before the district court.

respondents proposed. However, as discussed above, respondents were not required to provide the Wickers with any options, much less alternatives to the ones they proposed. See NRS 107.086(6); FMR 1(2); FMR 13(10). Consequently, relief is unwarranted in this respect.

Finally, given the foregoing, no evidentiary hearing was required to resolve the Wickers' arguments with respect to why they believed that respondents failed to comply with the FMP's requirements, notwithstanding the Wickers' assertions to the contrary. Thus, we conclude that the district court did not abuse its discretion by directing the issuance of a foreclosure certificate and dismissing the Wickers' petition for foreclosure mediation assistance on the basis that they failed to overcome the mediator's finding that respondents complied with the FMP's requirements. See *Jacinto*, 129 Nev. at 304, 300 P.3d at 727; *Pasillas*, 127 Nev. at 467, 255 P.3d at 1285. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

⁶Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Jerry A. Wiese, Chief Judge
William C. Turner, Settlement Judge
Crosby & Fox, LLC
Hutchison & Steffen, LLC/Las Vegas
Eighth District Court Clerk