


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTHUR J. BAYER, JR.,
INDIVIDUALLY AND AS TRUSTEE OF
THE BAYER FAMILY REVOCABLE
LIVING TRUST,
Appellants,
vs.
NATIONSTAR MORTGAGE, LLC D/B/A
MR. COOPER; WELLS FARGO BANK -
2007-3, N.A.; AND AFFINIA DEFAULT
SERVICES, LLC,
Respondents.

No. 87244-COA

FILED

NOV 22 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Arthur J. Bayer, Jr., appeals from a district court order directing issuance of a foreclosure certificate and dismissing a petition for foreclosure mediation assistance. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

In 2007, Bayer, Jr. purchased real property. To facilitate the purchase, Bayer executed a promissory note and a deed of trust that secured the note. The note was executed in favor of the original lender. The deed of trust designated Mortgage Electronic Registration Systems, Inc. (MERS), as the beneficiary, acting as nominee for the lender.

The note was subsequently endorsed in blank, making it payable to the bearer. MERS later executed an assignment of the deed of trust to respondent Nationstar Mortgage LLC (Nationstar) and that assignment was recorded. Nationstar subsequently executed an assignment of the deed of trust to respondent Wells Fargo Bank as trustee for a securitized trust (Wells Fargo) and that assignment was also recorded. Nationstar also became the servicer of the mortgage loan.

In 2019, respondent Affinia Default Services, LLC (Affinia), as trustee of the deed of trust, recorded a notice of default and election to sell, in which it stated that Bayer failed to meet his obligations under a note secured by a deed of trust. Bayer subsequently filed a petition for foreclosure mediation assistance in which he named Affinia and Nationstar as respondents to his petition. In his petition, Bayer requested to participate in Nevada's Foreclosure Mediation Program (FMP) and challenged Nationstar's authority to foreclose on the deed of trust. Nationstar thereafter filed a response in which it explained that it was the servicer of the loan and it had the authority to act on behalf of the beneficiary of the deed of trust, Wells Fargo.

Bayer filed a motion in which he argued that respondents failed to answer his petition and he requested the district court to enter their defaults and impose sanctions. The district court denied Bayer's motion because Nationstar responded to Bayer's petition. The court also found that Wells Fargo was not named in Bayer's petition and as such had not been required to respond to it. In addition, the court noted that the FMP rules did not allow for entry of respondents' defaults. Moreover, the district court concluded that sanctions were not warranted. The court also directed Affinia to respond to the petition, and Affinia thereafter filed an answer and a declaration of non-monetary status.

This matter proceeded to mediation. Respondents appeared at the mediation via counsel. In addition, an employee for Nationstar appeared remotely. 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 Bayer's petition for

foreclosure mediation assistance. In her statement, the mediator stated that respondents brought to the mediation the original note and the original deed of trust. The mediator also stated that respondents presented limited powers of attorney which granted counsel the authority to act on behalf of Wells Fargo and Nationstar at the mediation, including the authority to modify the loan. In addition, the mediator stated that the parties attempted to reach an agreement in good faith but were unable to do so. Finally, the mediator did not check any boxes indicating that respondents failed to bring any additional required documentation to the mediation.

Bayer thereafter filed a request for appropriate relief under FMR 20(2) arguing that respondents did not participate in the mediation in good faith, they failed to bring the necessary documentation to the mediation, and that the counsel representative who appeared at the mediation lacked authority to negotiate on their behalf. Bayer also requested sanctions based on the foregoing issues. Respondents disagreed with those points in their response and moved the district court to dismiss the petition.

The district court thereafter conducted an evidentiary hearing. The Nationstar employee who appeared at the mediation also testified at the hearing and he explained that all of the required documents had been presented at the mediation. The employee specifically identified the original note, original deed of trust, the assignments of the deed of trust, the broker price opinion, and the limited powers of attorney that authorized counsel to act on behalf of Wells Fargo and Nationstar at the mediation. After presentation of the evidence, the court denied Bayer's request for relief and sanctions. The court also entered a written order adopting the mediator's statement and dismissing the petition for foreclosure mediation.

In addition, the court transmitted a copy of the order dismissing the petition to Home Means Nevada, Inc. for it to issue a foreclosure certificate. *See* NRS 107.086(8). This appeal followed.

Bayer challenges the district court's decision to direct issuance of the foreclosure certificate, to dismiss his petition for foreclosure mediation assistance, and to reject his request for sanctions. 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 and will affirm its factual findings so long as they are not clearly erroneous and are supported by substantial evidence. *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 521-22, 286 P.3d 249, 260 (2012). Substantial evidence is evidence that "a sensible person may accept as adequate to sustain a judgment." *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). However, this court reviews the district court's legal conclusions *de novo*. *Edelstein*, 128 Nev. at 522, 286 P.3d at 260. 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 FMR 12(1)(a); *Edelstein*, 128 Nev. at 513, 286 P.3d at 255.

¹Although NRS 107.086 was amended effective July 1, 2023, *see* 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.

First, Bayer contends that Wells Fargo was not the actual beneficiary of the deed trust. Bayer also contends that all respondents lacked authority to enforce the note or the deed of trust.

“To prove that a previous beneficiary properly assigned its beneficial interest in the deed of trust, the new beneficiary can demonstrate the assignment by means of a signed writing.” *Edelstein*, 128 Nev. at 522, 286 P.3d at 260. Here, Wells Fargo was the beneficiary of the deed of trust based on the recorded assignments of the deed of trust. The record demonstrates that MERS, as nominee for the lender, was the original beneficiary of the deed of trust. MERS thereafter executed an assignment in favor of Nationstar. Nationstar subsequently executed an assignment in favor of Wells Fargo. Accordingly, Wells Fargo was the beneficiary of the deed of trust.

Moreover, the note was endorsed in blank, making the note payable to the bearer. *See* NRS 104.3205(2); *Edelstein*, 128 Nev. at 523, 286 P.3d at 261 (stating “a note initially made payable to order can become a bearer instrument, if it is endorsed in blank” (internal quotation marks omitted)). Respondents’ representative possessed the note, permitting Wells Fargo to enforce the note. *See Edelstein*, 128 Nev. at 523, 286 P.3d at 261 (“Accordingly, we conclude that because [the trustee] possessed the note, . . . the beneficiary, was entitled to enforce it.”). The note and deed of trust were thus reunified, and Wells Fargo, through its representative, could enforce the note and the deed of trust. *See id.* at 524, 286 P.3d at 262.

Based on the foregoing, the district court concluded that respondents brought the required documents demonstrating that Wells Fargo was the beneficiary and had the authority to enforce the note and the deed of trust. The court’s findings are supported by substantial evidence,

and therefore, we conclude that the district court did not abuse its discretion by rejecting this argument. *See id.* at 521-22, 286 P.3d at 260.

Second, Bayer contends that both the mediator and the district court erred by finding that the counsel representative that appeared at the mediation had the authority to modify the loan. Bayer further contends that Nationstar and its representative were not authorized to represent Wells Fargo. Based on the foregoing, Bayer contends that Wells Fargo, as the beneficiary, failed to attend the mediation. As explained previously, both the mediator and the district court found that respondents' counsel representative had been granted the authority to act on behalf of Wells Fargo, as the beneficiary of the deed of trust, through limited powers of attorney. One limited power of attorney authorized Nationstar to act on behalf of Wells Fargo. The second authorized counsel act on behalf of Nationstar and to modify the loan. Counsel brought the original note, the original deed of trust, and the assignments of the deed of trust to the mediation. Thus, substantial evidence supports the aforementioned finding that the counsel representative had the authority to modify the loan, and therefore, we conclude that the district court did not abuse its discretion by rejecting this argument. *See id.*

Third, Bayer contends that the limited powers of attorney that authorized the counsel representative to appear and act on behalf of respondents at the mediation were invalid. Bayer asserts that NRS 162A.480(2) requires recordation of such documents and neither limited power of attorney in this matter were recorded.

While Bayer contends the limited powers of attorney were invalid under NRS 162A.480(2), his argument is misplaced. Powers of attorney executed in another state are valid in Nevada if the execution

complied with the laws of the jurisdiction in which the power of attorney was executed. *See* NRS 162A.230(3)(a); NRS 162A.240. The limited powers of attorney at issue in this matter were executed in Maryland and Texas. Bayer has not provided cogent argument as to whether the limited powers of attorney were executed in compliance with the laws of the states in which they were executed. As a result, this court need not consider this issue. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38 130 P.3d 1280, 1288 n.38 (2006) (explaining that Nevada's appellate courts need not consider issues unsupported by cogent argument). Based on the foregoing, we conclude that Bayer is not entitled to relief based on this argument.

Fourth, Bayer contends that both the mediator and the district court erred by finding that respondents satisfied the FMP's document production requirements. Bayer contends the counsel representative at the mediation did not have original copies of the note and the deed of trust documents in her possession, as he asserts there were multiple copies of those documents and respondents did not demonstrate they possessed the originals. Bayer also argues that the district court should have required respondents to retain and present testimony from an expert document examiner to prove the authenticity of the original note and original deed of trust. In addition, Bayer contends that the broker price opinion presented at the mediation was stale and invalid.

FMR 12(1)(a) states that the beneficiary of the deed of trust "must bring to the mediation the original or a certified copy of the deed of trust, the mortgage note, each assignment of the deed of trust and each assignment and endorsement of the mortgage note, and any documents created in connection with a loan modification." In addition, FMR 13(7)(f) requires a beneficiary of a deed of trust to prepare and submit an appraisal

or a brokers price opinion that was prepared less than 60 days before the mediation.

Here, the mediator did not find that respondents failed to comply with FMR 12(1)(a)'s document production requirements. Moreover, the district court conducted an evidentiary hearing concerning this issue, where it heard testimony from the Nationstar employee concerning the documents and reviewed the documents that were brought to the mediation. After a review of the documents, the court rejected Bayer's contention that respondents should have presented testimony from an expert document examiner. In addition, the record demonstrates that respondents prepared a broker price opinion less than 60 days prior to the mediation as required by FMR 13(7)(f). As a result, the court ultimately found that the evidence demonstrated that respondents brought the required documents to the mediation.

Under these circumstances, we conclude that substantial evidence supports the district court's finding that respondents brought the required documents to the mediation. *See* FMR 12(1)(a); FMR 13(7)(f); *see also* NRS 107.086(5) (providing that the beneficiary of the deed of trust, or its representative, must produce an original or certified copy of the promissory note, deed of trust, and each assignment of those documents at the mediation). While Bayer challenges the district court's findings with respect to the original note and deed of trust and contends respondents did not prove the authenticity of those documents, this court will not second guess a district court's resolution of factual issues involving conflicting evidence or reconsider its credibility findings. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). Accordingly, we discern no abuse of discretion by rejecting Bayer's argument and

dismissing his petition for foreclosure mediation. *See Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260.

Fifth, Bayer argues that the district court abused its discretion by denying his motion seeking entry of respondents' defaults and the imposition of sanctions because they did not timely answer his petition as required by FMR 8(3)(b)(3). As stated previously, a district court's decision regarding the imposition of sanctions is reviewed for an abuse of discretion. *Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260. "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) (internal quotation marks omitted).

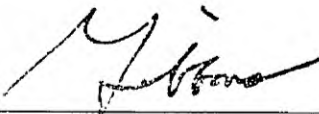
The district court rejected Bayer's request for entry of Wells Fargo's default because he did not name Wells Fargo in his petition. The court also found that the FMRs did not permit it to enter respondents' defaults. In addition, the court found that Nationstar responded to the petition and addressed the allegations contained within the petition. Finally, the court concluded that the circumstances in this matter did not warrant the imposition of sanctions.

The district court's factual findings are supported by substantial evidence. In addition, Bayer does not demonstrate that the court's decision to deny his motion was arbitrary or capricious or that it exceeded the bounds of law or reason. Accordingly, we discern no abuse of discretion in the district court's decision to deny Bayer's motion for default and for sanctions. *See Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260.

Finally, Bayer contends he did not default on the loan and raises several arguments concerning respondents' business activities.

However, these challenges are beyond the scope of the district court's review of the petition and the mediator's statement, *see* FMR 20(3), and thus, Bayer is not entitled to relief based on these contentions. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen A. Sigurdson, District Judge
Arthur J. Bayer, Jr.
Troutman Pepper Hamilton Sanders LLP/Atlanta
Troutman Pepper Hamilton Sanders LLP/Las Vegas
McCalla Raymer Leibert Pierce, LLP
Washoe District Court Clerk

²Insofar as Bayer raises 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.