IN THE COURT OF APPEALS OF THE STATE OF NEVADA

QUINNON MARTIN, III; AND MICHELLE MARTIN,
Appellants,
vs.
BANK OF NEW YORK MELLON AS SUCCESSOR IN INTEREST TO JP MORGAN CHASE BANK AS TRUSTEE FOR STRUCTURED ASSET INVESTMENTS II TRUST 2006-AR-7, MORTGAGE PASSTHROUGH CERTIFICATES SERIES 2006-AR-7; NATIONSTAR MORTGAGE, LLC D/B/A MR. COOPER; AND QUALITY LOAN SERVICING CORP.,
Respondents.

No. 88213-COA

ORDER OF AFFIRMANCE

Quinnon and Michelle Martin appeal from a district court order granting respondents' motion to dismiss with prejudice in a foreclosure action. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

In 2008, the Martins ceased making payments on their Hollywood Blvd. residence. In 2009, the deed holder moved to foreclose on the property due to lack of payment. Between 2009 and 2023, the Martins filed numerous civil actions challenging various aspects of the foreclosure process. On October 3, 2023, the Martins filed the underlying complaint, challenging several aspects of the foreclosure process. The Martins generally alleged respondents violated NRS 107.080 and NRS 107.085 by failing to personally serve the notice of breach and election of sale and a

"danger notice"[1] prior to selling the property at a foreclosure sale. The Martins acknowledged the notices were posted on the property but argued the statutes required that these notices be personally served on them. The Martins further alleged respondents violated NRS 107.086 and Nevada's Homeowner's Bill of Rights because the foreclosure mediation certificate, which was attached to the complaint, was invalid. Finally, the Martins sought injunctive and declaratory relief preventing the foreclosure sale and declaring there was no cloud on their title.

Respondents filed a motion to dismiss which generally argued the complaint's allegations are contradicted by the attached exhibits and that, to the extent the Martins were bringing an action for quiet title, it was barred by claim and issue preclusion. Further, respondents argued any request for injunctive relief or declaratory relief failed because the Martins could not demonstrate entitlement to such relief. Relevant to this appeal, respondents argued neither NRS 107.080 nor NRS 107.085 required personal service of the statutory notices and that the complaint acknowledged the notices were posted on the property.

The Martins filed an opposition which generally did not address respondents' argument that neither NRS 107.080 nor NRS 107.085 required personal service. Instead, the Martins argued dismissal was inappropriate due to various alleged deficiencies in the foreclosure process. Further, the Martins alleged the home was recently sold at a foreclosure sale and sought to have the sale undone. Respondents filed a reply and the

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[1]It appears that, by "danger notice," the Martins are referring to the notice required by NRS 107.085(2), which states that "YOU ARE IN DANGER OF LOSING YOUR HOME." *See* NRS 107.085(3)(b) (containing the foregoing quoted language).

district court held a hearing on the matter. At the hearing, the Martins clarified their position and stated that the notice of breach and election of sale and "danger notice" were not properly served because NRS 107.085 requires personal service of these notices.

The district court granted respondents' motion to dismiss with prejudice. The district court found that the documents the Martins attached to their complaint demonstrated respondents complied with NRS 107.086 and Nevada's Homeowner's Bill of Rights. Further, the district court found the Martins' claim regarding title issues was barred by claim and issue preclusion. Further, the district court dismissed the Martins' request for injunctive relief and declaratory relief because they failed to demonstrate any entitlement to such relief. Finally, the district court found that neither NRS 107.080 nor NRS 107.085 requires personal service of the statutory notices and that the Martins did not otherwise allege any deficiencies in service.

The Martins subsequently filed an omnibus motion seeking to set aside the judgment pursuant to NRCP 62(b) and (c), an evidentiary hearing and/or discovery regarding personal service, to stay execution of the judgment pursuant to NRCP 62(b), and to set aside the trustee's deed upon sale (foreclosure). Approximately one-month later, respondents filed an opposition to the omnibus motion. The opposition did not provide a reason for the untimely filing nor did it argue good cause or excusable neglect permitted an untimely filing. The Martins filed a reply, which argued the opposition was untimely and their omnibus motion should be granted as unopposed. The district court ultimately denied the Martins' omnibus motion without a hearing and without addressing the Martins' argument regarding the untimeliness of the opposition. The Martins now appeal.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal, with all alleged facts in the complaint and the attached documents presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.

On appeal, the Martins argue the district court committed legal error by finding NRS 107.080 and/or NRS 107.085 do not require personal service of the notice of breach and election of sale and the "danger notice." Further, the Martins argue the district court was biased against them because it allowed respondents to file an untimely opposition to the Martins' omnibus motion.[2]

The Martins' personal service contentions involve issues of statutory interpretation. "Statutory interpretation is a question of law subject to de novo review." *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). "The goal of statutory interpretation is to

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[2]The Martins present no argument regarding the dismissal of their NRS 107.086, Nevada's Homeowner's Bill of Rights, injunctive relief, and declaratory relief claims, and thus we conclude they have waived any challenge to the dismissal of those claims. They likewise do not challenge the denial of their post-judgment motion to set aside the judgment, aside from asserting that the court's consideration of the untimely opposition to this motion demonstrates the court was biased against them, and thus have waived any challenge to this decision. *See Bongiovi v. Sullivan*, 122 Nev. 556, 570 n.5, 138 P.3d 433, 444 n.5 (2006) (issues not raised in an appellant's opening brief are deemed waived); *see also* NRAP 28(a)(8).

give effect to the Legislature's intent." *Id.* (internal quotation marks omitted). "To ascertain the Legislature's intent, we look to the statute's plain language." *Id.* "When the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, this court must give effect to that plain meaning as an expression of legislative intent without searching for meaning beyond the statute itself." *Bd. of Parole Comm'rs v. Second Jud. Dist. Ct. (Thompson)*, 135 Nev. 398, 404, 451 P.3d 73, 78-79 (2019) (internal quotation marks omitted).

We conclude NRS 107.080(4) does not require personal service of a notice of foreclosure sale and thus the district court did not err in granting the motion to dismiss on this basis. The plain language of NRS 107.080(4)(a) states that the person authorized to make the sale under the terms of the deed of trust shall give notice of the breach and election to sell "by mailing the notice by registered or certified mail to the last known address of the trustor and any other person entitled to such notice pursuant to this section." And other than the lack of personal service, the Martins did not allege respondents violated NRS 107.080. As a result, this argument does not provide a basis for relief.

Next, to the extent the Martins argue NRS 107.085 requires personal service of the "danger notice" because the foreclosure concerned an owner-occupied home, this argument also fails because the plain language of the statute states that the notice can be served by "posting a copy in a conspicuous place on the trust property . . . and mailing a copy to the grantor or the person who holds the title of record at the place where the trust property is situated." NRS 107.085(3)(a)(2)(III). Again, other than the lack of personal service, the Martins did not allege respondents violated NRS

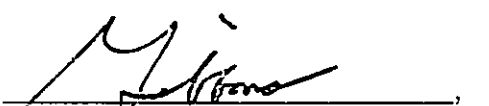
107.085 and instead acknowledged the "danger notice" was posted on their residence. Thus, this argument also does not provide a basis for relief.

Turning to the Martins' allegation of bias against the district court, we conclude relief is unwarranted based on this argument because the Martins have not demonstrated the district court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions did not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022). To the extent the Martins argue the denial of their omnibus motion is somehow proof of judicial bias given the untimely filing of respondents' opposition, court rulings generally do not establish grounds for disqualification. *See Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 277-78, 182 P.3d 764, 768 (2008) (noting district courts have discretion to consider a late-filled opposition); *see also* EDCR 2.20(e) (noting

district courts are *permitted* but not *required* to treat an untimely opposition as consent to granting the motion). Further, the Martins have not identified any evidence in the record demonstrating the district court's decision reflected deep seated favoritism. Accordingly, we conclude the Martins have not demonstrated any entitlement to relief.[3]

Accordingly, based on the reasoning set forth above, we ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
Michelle Martin
Quinnon Martin, III
Troutman Pepper Hamilton Sanders LLP/Las Vegas
McCarthy & Holthus, LLP/Las Vegas
Eighth District Court Clerk

[3]Insofar as the Martins 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.