

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DESIREE DEVANEY,
Appellant,
vs.
QUALITY LOAN SERVICE
CORPORATION; AND U.S. BANK N.A.,
Respondents.

No. 77445-COA

FILED

FEB 27 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Desiree Devaney appeals from a district court order denying a petition for judicial review in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Devaney participated in Nevada's foreclosure mediation program (FMP) with the beneficiary of the first deed of trust on her property, respondent U.S. Bank, N.A., and the deed of trust trustee, respondent Quality Loan Service Corporation (referred to collectively as U.S. Bank). While the mediation ultimately ended unsuccessfully, the mediator determined that U.S. Bank complied with all of the FMP's requirements and, as a result, he did not recommend that sanctions be imposed against U.S. Bank.

Devaney then petitioned for judicial review alleging, among other things, that U.S. Bank failed to comply with the FMP's requirements, that U.S. Bank produced a fraudulent promissory note, and that, years

before the mediation, she entered into a loan modification agreement with one of U.S. Bank's predecessors in interest that was never honored. U.S. Bank opposed the petition, and the district court summarily denied it and directed the issuance of a foreclosure certificate. This appeal followed.

On appeal, Devaney reiterates her allegations concerning the fraudulent note and prior loan modification, asserting that they demonstrate that she did not default on her loan and that U.S. Bank lacked authority to foreclose. But a review of the transcript from the relevant hearing reveals that the district court determined that these issues were beyond the scope of a petition for judicial review of an FMP matter. See *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011) (recognizing that oral pronouncements in the record that are consistent with a judgment may be used by the appellate court to construe the judgment). And because Devaney failed to address that determination on appeal, she waived any challenge thereto. 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).

The transcript from the hearing on Devaney's petition also demonstrates that the district court denied her petition because it found that U.S. Bank complied with all of the prerequisites for the issuance of a foreclosure certificate. See *Holt*, 127 Nev. at 895, 266 P.3d at 608; see also

NRS 107.086(5)-(6)¹ (requiring the beneficiary or its representative to attend the mediation; produce certain loan documents; negotiate in good faith; and establish, where appropriate, the representative's authority to negotiate for the beneficiary); *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 304, 300 P.3d 724, 727 (2013) (explaining that, if the beneficiary fails to comply with the requirements set forth in NRS 107.086(5) and (6), then the district court must deny the issuance of a foreclosure certificate at the minimum and consider whether additional sanctions are warranted). To the extent that Devaney challenges that finding, her challenge fails because the finding was supported by substantial evidence in the record and was not clearly erroneous. See *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 521-22, 286 P.3d 249, 260 (2012) (explaining that the district court's factual findings are given deference if they are supported by substantial evidence and are not clearly erroneous).


Lastly, although Devaney contends that an unidentified statute of limitations precluded U.S. Bank from foreclosing on her property, relief is unwarranted because a beneficiary may nonjudicially foreclose on secured property even when an action on the secured debt would otherwise be time-barred. See *Facklam v. HSBC Bank USA*, 133 Nev. 497, 499, 401 P.3d 1068, 1070-71 (2017) (holding that "a lender may recover on a deed of

¹NRS 107.086 was amended effective October 1, 2019, 2019 Nev. Stat., ch. 238, § 12, at 1359-64, but the amendment does not affect the disposition of this appeal, as it was enacted after the underlying mediation.

trust even after the statute of limitations for contractual remedies on the note has passed"). Thus, given the foregoing, we conclude that the district court did not abuse its discretion in denying Devaney's petition and directing the issuance of a foreclosure certificate. *See Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 480, 255 P.3d 1275, 1281 (2011) (reviewing the denial of a petition for judicial review in an FMP matter for an abuse of discretion). Accordingly, we affirm the district court's decision.

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Insofar as Devaney raises arguments that are not specifically addressed in this order, we have considered them and conclude that they do not present a basis for relief.

cc: Hon. Linda Marie Bell, Chief Judge
Desiree Devaney
McCarthy & Holthus, LLP/Las Vegas
Smith Larsen & Wixom
Eighth District Court Clerk