

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUANITA MATZ,
Appellant,
vs.
WESTERN PROGRESSIVE-NEVADA;
OCWEN LOAN SERVICING, LLC; AND
WELLS FARGO BANK, N.A.,
Respondents.

No. 79279-COA

FILED

AUG 28 2020

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

ORDER OF AFFIRMING IN PART AND VACATING IN PART

Juanita Matz appeals from a district court order granting a motion to strike her petition for judicial review of a foreclosure mediation matter and motion to stay foreclosure proceedings. Eighth Judicial District Court, Clark County; James Crockett, Judge.

After defaulting on her home loan, Matz filed a petition to participate in Nevada's Foreclosure Mediation Program (FMP) in the district court (the foreclosure mediation action). The matter was then assigned to a mediator, but the resulting foreclosure mediation ended unsuccessfully. Matz subsequently filed an objection to the mediator's statement in the district court, and the district court essentially treated the objection as "a request for appropriate relief" under FMR 20(2), which authorizes either party to a foreclosure mediation to file such a request with the district court within 10 days after the mediator's statement is filed in the district court. Following a hearing on the matter, the district court affirmed the mediator's statement.

Matz later commenced the underlying proceeding against respondents Western Progressive-Nevada; Ocwen Loan Servicing, LLC;

and Wells Fargo Bank, N.A., by filing a petition for judicial review of the foreclosure mediation and motion for a stay of foreclosure proceedings (the second action). Respondents moved to strike Matz's petition and motion arguing, among other things, that it was improper for Matz to file the petition in the second action since the district court in the foreclosure mediation action already affirmed the mediator's statement. Over Matz's opposition, the district court granted respondents' motion and directed the issuance of a foreclosure certificate. This appeal followed.

On appeal, Matz presents various challenges relating to the mediator's statement. But the district court struck Matz's petition for judicial review of the foreclosure mediation and motion to stay foreclosure proceedings on the ground that, among other things, it was improper for Matz to file a petition for judicial review to challenge the mediator's statement in the second action. And because Matz does not 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). Moreover, the district court was correct in this respect, as the foreclosure mediation statute and FMRs require that a challenge to a mediator's statement be presented in the district court action in which the petition to participate was filed for the district court to consider in connection with its entry of a final judgment in the matter. *See* NRS 107.086(3), (6)-(9)¹

¹Although NRS 107.086 was amended effective October 1, 2019, *see* 2019 Nev. Stat., ch. 238, § 12, at 1359-64, we apply the version of that statute that went into effect on June 12, 2017, *see* 2017 Nev. Stat., ch. 571, § 2, at 4091-96, since it was the version that was in effect at the time of the underlying mediation.

(authorizing certain homeowners to petition the district court to participate in the FMP and requiring the district court to assign the matter to a mediator and to take various case-concluding actions depending on the outcome of the mediation); FMR 3(2), 20(3)² (requiring the district court to assign a mediator after receipt of a petition to participate and to take various case-concluding actions after considering the mediator's statement and any request for appropriate relief from either of the parties to the mediation). Thus, given the foregoing, we affirm the district court's decision to strike Matz's petition for judicial review and motion for a stay.³

Nevertheless, just as it was improper for Matz to file her petition for judicial review in the second action, it was likewise improper for the district court in the second action to direct the issuance of a foreclosure certificate with respect to the subject property, as matters pertaining to the foreclosure mediation were not properly before the court. See NRS 107.086(3), (6)-(9); FMR 3(2), 20(3). Indeed, the foreclosure mediation

²The FMRs became effective on June 30, 2009, and have been amended and renumbered numerous times since. For clarity, the citations in the text are to the FMRs that went into effect on August 31, 2017, which were the FMRs in effect at the time the underlying mediation occurred.

³Insofar as Matz argues that she was deprived of her due process rights when the district court struck her petition and motion rather than hearing her challenge to the mediator's statement, her argument fails as she had notice of respondents' motion to strike those documents and an opportunity to be heard on the matter, which was all that was required. See *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (recognizing that procedural due process requires meaningful notice and an opportunity to be heard). To the extent Matz maintains that her due process rights were violated in the foreclosure mediation action or that a different result was warranted in that proceeding, her challenges are not properly before us in the context of an appeal from the final judgment in the second action.

statute and FMRs specifically vest the district court in the foreclosure mediation action with the authority to dismiss Matz's petition to participate, after considering the mediator's statement and Matz's request for appropriate relief, and further require the court to transmit a copy of the dismissal order to Home Means Nevada, Inc. (HMN), for it to issue a foreclosure certificate. See NRS 107.086(8) (providing that, when the district court receives a recommendation from a mediator to dismiss a petition to participate, the district court must consider the recommendation, and if it dismisses the petition, transmit the dismissal order to HMN, which must then issue a foreclosure certificate); FMR 20(3) (requiring the district court to consider the mediator's statement, along with any request for appropriate relief, before dismissing a petition to participate). Thus, any effort by respondents to obtain a foreclosure certificate must be pursued in the foreclosure mediation action. Accordingly, we vacate the portion of the district court's order directing the issuance of a foreclosure certificate.⁴

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

⁴While this court generally will not grant a pro se appellant relief without providing the respondent an opportunity to respond, NRAP 46A(c), a response here would be futile given that the district court lacked authority to direct the issuance of a foreclosure certificate.

cc: Hon. James Crockett, District Judge
Juanita Matz
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Eighth District Court Clerk