

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENNIS BAHAM,  
Appellant,  
vs.  
BAYVIEW LOAN SERVICING, LLC,  
Respondent.

No. 78491-COA

FILED

OCT 09 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Dennis Baham appeals from a district court order denying a request for appropriate relief in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

After defaulting on his home loan, Baham elected to participate in Nevada's Foreclosure Mediation Program (FMP), and respondent Bayview Loan Servicing, LLC (Bayview)—acting as servicer on behalf of the lender and beneficiary of the first deed of trust, The Bank of New York Mellon (BNYM)—appeared at the mediation. The parties did not come to an agreement on a loan modification, and the mediator recommended that the district court dismiss Baham's petition for foreclosure mediation assistance and direct the issuance of a foreclosure certificate. Baham subsequently filed a request for appropriate relief under FMR 20(2) in the district court, arguing primarily that the power of attorney authorizing Bayview to act on BNYM's behalf did not provide it with the authority necessary to participate in the FMP. On that ground, Baham requested that the district court sanction Bayview by declining to direct the issuance

of a foreclosure certificate. Following a hearing, the district court entered a written order denying Baham's request, and this appeal followed.

Nearly five months after the district court entered its order, and while this appeal was pending, Baham filed a motion—styled as a “motion to alter or amend judgment”—requesting that the district court set its order aside under NRCP 60(b)(2) on grounds of newly discovered evidence. Specifically, Baham contended that shortly before the district court entered its order, he received a letter from the Nevada Financial Institutions Division (NFID) informing him that Bayview had not been licensed as a debt collector at the time it initiated the underlying foreclosure. He argued that Bayview therefore lacked authority to foreclose or participate in the FMP proceedings. The district court denied Baham's motion, concluding that the letter from NFID did not constitute newly discovered evidence.

On appeal, Baham largely abandons his arguments from below concerning the power of attorney granted to Bayview by BNYM.<sup>1</sup> Instead, he contends that the district court abused its discretion by denying his motion for relief under NRCP 60(b)(2), and he again argues that Bayview lacked authority to foreclose or participate in the FMP proceedings because it was not properly licensed as a debt collector when it initiated foreclosure.

---

<sup>1</sup>Baham states in his opening brief that the representative for BNYM at the mediation did not possess a power of attorney executed by that entity and instead only possessed one executed by Bayview. But this assertion is contradicted by the record, which reflects that Bayview acted as BNYM's representative at the mediation and that BNYM had executed a power of attorney in Bayview's favor allowing it to do so.

Baham also contends that a letter from BNYM that he had attached to his request for appropriate relief below shows that BNYM might not be the true beneficiary of the first deed of trust and that Bayview also lacked the requisite authority to participate on that ground.<sup>2</sup>

In an FMP matter, we give deference to the district court's factual determinations, but we review legal issues de novo. *Pascua v. Bayview Loan Servicing, LLC*, 135 Nev. 29, 31, 434 P.3d 287, 289 (2019).

With respect to Baham's arguments concerning NRCP 60(b) relief and Bayview's failure to be licensed as a debt collector, we decline to consider those issues, as they are not properly before us. Baham's notice of appeal does not identify the district court's order denying his request for NRCP 60(b) relief, and he did not file a separate notice of appeal from that order. See NRAP 3(c)(1)(B) (providing that a notice of appeal must

---

<sup>2</sup>Bayview contends that Baham waived this issue by failing to raise it below, but we disagree. Although the district court did not expressly address the issue in its order, Baham attached the letter from BNYM to his request for appropriate relief and referred to it therein as proof that Bayview failed to comply with all of the FMP requirements. Thus, this issue is properly before us on appeal. However, Baham does argue for the first time on appeal in his reply brief that Bayview failed to provide copies of certain required documents at the mediation, including the underlying note and an August 2013 assignment. Because he did not present these issues to the district court and instead presents them for the first time in his reply brief, we decline to consider them. See *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."); see also *Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (concluding that an issue raised for the first time in a reply brief was waived).


“designate the judgment, order or part thereof being appealed”); *see also Yu v. Yu*, 133 Nev. 737, 738 n.1, 405 P.3d 639, 639 n.1 (2017) (recognizing that an order denying NRCP 60(b) relief is independently appealable). Further, this court will generally not consider any order on appeal that is not included in a notice of appeal unless, among other things, “the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice.” *Collins v. Union Fed. Sav. & Loan Ass’n*, 97 Nev. 88, 89-90, 624 P.2d 496, 497 (1981). And Baham could not have intended to seek this court’s review of the order denying NRCP 60(b) relief at the time he filed his notice of appeal because he filed the notice prior to filing his NRCP 60(b) motion. Moreover, to the extent Baham’s motion sought reconsideration or other relief, the arguments presented in the motion are likewise not properly before us given that Baham filed the motion after filing the notice of appeal. *See Arnold v. Kip*, 123 Nev. 410, 416-17, 168 P.3d 1050, 1054 (2007) (noting that arguments made in a motion for reconsideration can be reviewed in the context of an appeal from a final judgment when, among other things, they are properly part of the record on appeal as demonstrated by the motion and order having been filed prior to the notice of appeal).

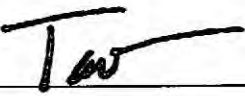
We likewise reject Baham’s contention that the letter from BNYM that he had attached to his underlying request for appropriate relief indicates that BNYM is not the true beneficiary of the first deed of trust. As argued by Bayview, the letter merely indicates that BNYM is not the servicer of the underlying loan; it says nothing about BNYM’s status as holder of the underlying note and deed of trust. Accordingly, Baham has failed to set forth any grounds for reversal of the district court’s order

denying his request for appropriate relief and directing the issuance of a foreclosure certificate. *See Pascua*, 135 Nev. at 31, 434 P.3d at 289.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Linda Marie Bell, Chief Judge  
Cogburn Law Offices  
Akerman LLP/Las Vegas  
Eighth District Court Clerk