

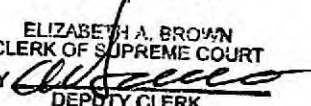
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS, LLC,  
Appellant,  
vs.  
DITECH FINANCIAL LLC, F/K/A  
GREEN TREE SERVICING LLC,  
Respondent.

No. 80414-COA

**FILED**

JAN 29 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

RH Kids, LLC (RH), appeals from a final judgment following a bench trial in a quiet title action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

The original owner of the subject property failed to make periodic payments to her homeowners' association (HOA). The HOA recorded a notice of delinquent assessment lien and later a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. The purchaser at the resulting foreclosure sale filed the underlying action seeking to quiet title against the beneficiary of the first deed of trust on the property, respondent Ditech Financial LLC, f/k/a Green Tree Servicing LLC (Ditech), which counterclaimed for the same. RH eventually acquired the property and substituted into the action in place of its predecessor. Following a bench trial, the district court ruled in favor of Ditech, finding that the Federal National Mortgage Association (Fannie Mae) owned the underlying loan such that 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) prevented the foreclosure sale from extinguishing Ditech's deed of trust. This appeal followed.

This court reviews a district court's legal conclusions following a bench trial de novo, but we will not disturb the district court's factual findings "unless they are clearly erroneous or not supported by substantial evidence." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018).

On appeal, RH only challenges the district court's decision by disputing whether Ditech proved that Fannie Mae had an interest in the property that was subject to the Federal Foreclosure Bar. In particular, RH contends that Fannie Mae was required to record its interest when it acquired the underlying loan in 2006 because it was not yet under the conservatorship of the Federal Housing Finance Agency (FHFA). From there, RH reasons that the Federal Foreclosure Bar was not yet in effect and could not have preempted Nevada's recording statutes.<sup>1</sup> But RH misreads our supreme court's holding in *Daisy Trust v. Wells Fargo Bank, N.A.*, which was not that the Federal Foreclosure Bar preempts Nevada's recording statutes, but rather that the recording statutes simply do not apply to the situation at issue here where a regulated entity owns the loan and its agent is the beneficiary of the recorded deed of trust. 135 Nev. 230, 234, 445 P.3d 846, 849 (2019) (specifically noting that, in light of its disposition, the court "need not address Freddie Mac's argument that the Federal Foreclosure Bar preempts Nevada's recording statutes"). Accordingly, RH's argument is without merit.

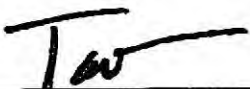
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<sup>1</sup>RH failed to raise this issue during the underlying proceeding. Although we need not consider it, see *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."), RH's argument nevertheless fails on its merits as set forth herein.

Because the testimony and business records produced below were sufficient to prove Fannie Mae's ownership of the note and the agency relationship between it and Ditech in the absence of contrary evidence, *see id.* at 234-36, 445 P.3d at 849-51, the district court properly concluded that the Federal Foreclosure Bar prevented extinguishment of Ditech's deed of trust and that RH took the property subject to it. *See Saticoy Bay LLC Series 9641 Christine View v. Fed. Nat'l Mortg. Ass'n*, 134 Nev. 270, 273-74, 417 P.3d 363, 367-68 (2018) (holding that the Federal Foreclosure Bar preempts NRS 116.3116 such that it prevents extinguishment of the property interests of regulated entities under FHFA conservatorship without affirmative FHFA consent). Consequently, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

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<sup>2</sup>We decline to impose sanctions against RH or its counsel under NRAP 38 as requested by Ditech. Nevertheless, we remind RH's counsel of his obligations under RPC 3.1 to only advance arguments if there is a basis in law and fact for doing so and, when existing precedent does not align with his clients' interests, to present good-faith arguments for its modification or reversal.

cc: Hon. Jerry A. Wiese, District Judge  
Hong & Hong  
Wolfe & Wyman LLP  
Eighth District Court Clerk