

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RANDY SPRINGER,
Appellant,
vs.
U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR MASTERS ASSET
BACKED SECURITIES TRUST 2005-
HE1, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES-HE1,
Respondent.

No. 81113-COA

FILED

JUN 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Randy Springer appeals from a district court amended order dismissing a petition for foreclosure mediation assistance. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

After defaulting on his home loan, Springer elected to participate in Nevada's Foreclosure Mediation Program (FMP), and respondent U.S. Bank National Association (U.S. Bank), the beneficiary of the first deed of trust on the subject property, appeared at the mediation. Following a mediation hearing, U.S. Bank filed a notice of settlement and a stipulation, signed by counsel for both parties, in the district court that extended the time for the mediator to file a mediator's statement. The stipulation explained that the parties had agreed to the terms of a written settlement agreement that was awaiting execution and was to be attached to the mediator's statement.

The mediator later filed the mediator's statement in the district court, but no settlement agreement was attached. Instead, the mediator checked the box on the mediator's statement indicating that the parties

were unable to agree to a loan modification or make other arrangements, but also explained in a separate comments section that the parties reached a settlement agreement, which Springer then refused to execute. As a result, the mediator recommended that the district court dismiss Springer's petition for foreclosure mediation assistance and direct the issuance of a foreclosure certificate.

Springer filed a request for appropriate relief arguing that a foreclosure certificate should not issue because the parties did not reduce the terms of their settlement agreement to a signed writing and U.S. Bank did not otherwise satisfy the FMP's requirements. U.S. Bank, in turn, moved to enforce the settlement agreement arguing, among other things, that it is enforceable because the stipulation, along with an email exchange that occurred between the parties' counsel, demonstrated that the parties reached an agreement and established the agreement's terms. At the hearing that followed, U.S. Bank's counsel, Ramir M. Hernandez, elaborated with respect to the email exchange. In particular, Hernandez explained that he emailed a written settlement agreement to Springer's counsel, James S. Kent; that Kent proposed changes; and that Hernandez accepted the changes.

Based on U.S. Bank's notice of settlement, the parties' stipulation, and the email exchange between Hernandez and Kent, the district court found that the parties entered into a valid, enforceable settlement agreement. Thus, the district court granted U.S. Bank's motion, dismissed Springer's petition for foreclosure mediation assistance as moot, and directed the issuance of a foreclosure certificate in accordance with the

written settlement agreement, which the court attached to its order. This appeal followed.

We defer to a district court's determination that the parties to a foreclosure mediation reached an enforceable settlement agreement unless that determination is clearly erroneous or unsupported by substantial evidence. *Jones v. SunTrust Mortg., Inc.*, 128 Nev. 188, 191, 274 P.3d 762, 764 (2012). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* (internal quotation marks omitted).

On appeal, Springer initially argues that, because U.S. Bank did not seek to enforce the settlement agreement within the time for filing a request for appropriate relief, the district court lacked jurisdiction to consider its motion to enforce. *See* FMR 20(2)¹ (permitting either party to an FMP proceeding to file a request for appropriate relief in the district court within 10 days after the mediator's statement is filed in the district court); *Nationstar Mortg., LLC v. Rodriguez*, 132 Nev. 559, 561-63, 375 P.3d 1027, 1028-30 (2016) (applying FMR 20(2)'s counterpart from a prior version of the FMRs, which referred to a request for appropriate relief as a petition for judicial review, and recognizing that the timely filing of a petition for judicial review is jurisdictional). But when a party to an FMP proceeding files a request for appropriate relief, the opposing party may, without filing its own request or cross-request, argue in support of the

¹The FMRs were originally adopted on June 30, 2009, and have been amended and renumbered numerous times since. For clarity, we apply the FMRs that went into effect on August 31, 2017, which governed the proceedings at the time the underlying mediation occurred.

mediator's recommendation. *Cf. Gubber v. Indep. Mining Co.*, 112 Nev. 190, 192, 911 P.2d 1191, 1192 (1996) (holding that a party's failure to file a cross-petition before the district court did not prevent the party from raising an argument on appeal in support of an appeals officer's decision); *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 757 & n.5, 877 P.2d 546, 548, 550 & n.5 (1994) (dismissing a cross-appeal and concluding that the cross-appellant could present its arguments in support of the district court's judgment in the context of the cross-respondent's appeal from that decision).

In this respect, Springer attempts to show that the mediator's recommendation was not based on the parties' settlement agreement, and based on that proposition, he contends that U.S. Bank's motion to enforce went beyond presenting argument in support of the mediator's recommendation by seeking affirmative relief. *See Ford*, 110 Nev. at 755, 877 P.2d at 548 (explaining, in the context of an appeal, that "a respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal"). But Springer's focus on the grounds for the mediator's recommendation is misplaced since U.S. Bank could properly oppose Springer's request for appropriate relief by "advanc[ing] any argument in support of the [mediator's recommendation] even if the [mediator] rejected or did not consider the argument." *Id.* And because U.S. Bank argued in its motion to enforce that the parties' settlement agreement required the district court to direct the issuance of a foreclosure certificate, which is what the mediator recommended, Springer has failed to demonstrate that the court lacked jurisdiction to consider U.S. Bank's argument. *See Edelstein*, 128 Nev. at 521-22, 286 P.3d at 260; *see also*

Ogawa v. Ogawa, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009) (“Subject matter jurisdiction is a question of law subject to de novo review.”).

Turning to the enforceability of the parties’ settlement agreement, Springer initially observes that its terms were not set forth in the mediator’s statement, U.S. Bank’s notice of settlement, or the parties’ stipulation. Consequently, Springer maintains that the terms of the parties’ settlement agreement were not reduced to a signed writing and that it is therefore unenforceable under *Jones*, 128 Nev. at 189, 274 P.3d at 763, which holds that an agreement entered into during an FMP mediation, which is signed by the parties and otherwise comports with contract law principles, is enforceable under DCR 16² (providing that agreements or stipulations reached during proceedings are enforceable if they are in a signed writing or entered into the minutes).

²Although the underlying proceeding involves an FMP mediation, it arises out of the Eighth Judicial District Court, *see* NRS 107.086(3), (6)-(9) (requiring the petition for mediation assistance to be filed in the district court and requiring the district court to resolve the petition following the mediation), such that EDCR 7.50 is the applicable rule. Because EDCR 7.50 essentially replicates DCR 16 with minor, non-substantive revisions, this court discusses the present matter in terms of EDCR 7.50. We note that the FMRs include similar rules, *see* FMR 18(1) (requiring a temporary modification agreement such as the one at issue here to be set forth in a signed writing); FMR 20(1) (providing that the mediator’s statement must include a copy of any agreement that the parties enter into during the mediation). However, these rules essentially duplicate the function of DCR 16 and its corresponding local rules, which is to “give[] the court . . . an efficient method for determining genuine settlements and enforcing them.” *See Grisham v. Grisham*, 128 Nev. 679, 683, 289 P.3d 230, 233 (2012) (internal quotation marks omitted).

In presenting this argument, however, Springer overlooks that that the district court made specific findings concerning an email exchange that occurred between the parties' counsel following the mediation, but before they executed the parties' stipulation, which indicated that they agreed to the terms of a written settlement agreement. In particular, the district court found that Hernandez emailed Kent a written settlement agreement, that Kent responded with proposed changes, and that Hernandez approved those changes. Springer also overlooks that the district court's determination that the parties entered into a valid, enforceable settlement agreement was based, in part, on this undisputed email exchange. Given that Springer overlooks these points, he does not address whether it was appropriate for the district court to rely on Hernandez's representations concerning this email exchange, whether a contract was formed as a result of this email exchange, or whether the email exchange constituted a signed writing for purposes of EDCR 7.50.

Consequently, Springer has waived these issues, *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); *see also Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n. 38 (2006) (declining to consider issues that are not supported by cogent argument and relevant legal authority), and thereby fails to demonstrate that the district court incorrectly concluded that the parties' settlement agreement is valid and enforceable. Springer therefore has not established that the district court improperly denied his request for appropriate relief, dismissed his petition for foreclosure mediation

assistance, and directed that a foreclosure certificate issue.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
James S. Kent
Wright, Finlay & Zak, LLP/Las Vegas
Eighth District Court Clerk

³Given that Springer agreed to the issuance of a foreclosure certificate in a valid, enforceable settlement agreement, we need not consider his remaining arguments concerning whether such a certificate should issue. *See Jones*, 128 Nev. at 191-92, 274 P.3d at 764-65 (holding that an enforceable settlement agreement arising from the FMP waives any issues concerning noncompliance with NRS 107.086 and the FMRs); 13B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3533.2 (2021) (“A settlement of all claims among all parties . . . removes the necessary element of adversariness and moots the action.”).