

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AIRMOTIVE INVESTMENTS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
BANK OF AMERICA, N.A.,
Respondent.

No. 80373-COA

FILED

JAN 27 2022

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

ORDER OF AFFIRMANCE

Airmotive Investments, LLC, appeals from a final judgment in a quiet title action. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Airmotive's predecessor in interest, Las Vegas Development Group, LLC (LVDG), purchased the subject property at a homeowners' association (HOA) foreclosure sale conducted pursuant to NRS Chapter 116. LVDG then initiated the underlying action seeking, among other things, to quiet title against respondent Bank of America, N.A. (BOA)—the beneficiary of the first deed of trust on the property—which ultimately counterclaimed seeking the same. BOA later moved for summary judgment, arguing that the Federal National Mortgage Association (Fannie Mae) owned the underlying loan secured by the deed of trust at the time of the HOA foreclosure sale such that 12 U.S.C. § 4617(j)(3) (the Federal Foreclosure Bar) prevented the sale from extinguishing BOA's interest.

In opposition, Airmotive—which had acquired the property and substituted into the action in place of LVDG, with which it shares a managing member—argued in part that BOA supposedly failed to comply

with its disclosure obligations under NRCP 16.1 and 26, as it did not disclose critical evidence concerning its foreclosure-bar defense until the final day of the discovery period. On that ground, Airmotive argued that the district court should decline to consider that evidence. Without specifically addressing Airmotive's argument on this point, the district court entered a written order granting BOA's motion for summary judgment, concluding that the foreclosure bar applied and that the deed of trust therefore survived the HOA foreclosure sale.¹ The district court thereafter entered an order awarding costs to BOA, followed by a final judgment reflecting the parties' stipulation to dismiss all remaining claims.² This appeal followed.³

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* However, discovery matters generally fall "within the district court's sound discretion,

¹We construe the district court's silence on the discovery issue as a denial of Airmotive's requested relief. *See Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) ("The absence of a ruling awarding the requested [relief] constitutes a denial of the [request].").

²Airmotive contends this court must reverse the costs award if it reverses the underlying summary judgment. In light of our disposition, we affirm the costs award.

³Although the Honorable Bonnie Bulla, Judge, participated in the underlying proceeding as discovery commissioner, she did not have any involvement in any decision relevant to the issues presented on appeal, and, therefore, Judge Bulla participated in the decision of this appeal.

and we will not disturb a district court's ruling regarding discovery unless the court has clearly abused its discretion." *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 224, 467 P.3d 1, 4 (Ct. App. 2020) (internal quotation marks omitted).

On appeal, Airmotive does not challenge the merits of the district court's ruling concerning the applicability of the Federal Foreclosure Bar; instead, it argues only that BOA failed to timely produce documents to support its defense. Specifically, Airmotive contends that the district court erred or abused its discretion by not prohibiting BOA from presenting its untimely disclosed evidence in support of its foreclosure-bar defense as a discovery sanction. Airmotive argues it was prejudiced by BOA's tardy disclosure because it was supposedly not afforded an opportunity to conduct discovery, including deposing a representative of Fannie Mae who provided a declaration in support of BOA's foreclosure-bar defense.

Even if BOA's disclosure regarding its Federal Foreclosure Bar defense was arguably untimely,⁴ Airmotive failed to seek relief from the district court to conduct additional discovery based on the disclosure in the form of either an extension of the discovery deadlines pursuant to EDCR 2.35 or an order granting relief under NRCP 56(d)(2), which provides that if a nonmovant shows that "it cannot present facts essential to justify its opposition [to a motion for summary judgment], the court may: . . . allow time to obtain affidavits or declarations or to take discovery." In light of its

⁴We note that the declaration in support of the defense was executed on January 10, 2019, but not disclosed until the last day of discovery on March 6, 2019. We also note that, based on our review of the record, the declaration and other documents contained in BOA's disclosure were not previously made available to Airmotive.

failure to pursue available remedies, any error or defect in the timeliness of BOA's disclosures did not prejudice Airmotive or affect its substantial rights. *See Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) ("To be reversible, an error must be prejudicial and not harmless."); *cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). We therefore decline to disturb the district court's decision not to impose sanctions for the allegedly untimely disclosure, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 23
Roger P. Croteau & Associates, Ltd.
Akerman LLP/Las Vegas
Eighth District Court Clerk